

IN THE MATTER OF	:	HOWARD COUNTY
<b>AT&amp;T MOBILITY</b>	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 14-005C

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### DECISION AND ORDER

On June 30, August 25 and 26, September 8, 23, 29 and October 20, 2014, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of AT&T Mobility (AT&T) (Petitioner) for a Commercial Communications Tower Conditional Use in an RR-DEO (Rural Residential: Density Exchange Option) District, filed pursuant to § 131.0.N.14 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the advertising and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure.

Phil Stetler, Oakleigh Thorne, Ivan Caballero, Nick Berté, Jeremy Talman and Brian Harrison testified in support of the petition. Henry (Hank) Eagles, Tom Pirritano, Leslie McGowan, Catherine Michele Hayden, Chris Hoyson, Melissa Holton, Larry Greenblatt, Michael Amato, Viram Patel, Dustin Hill, Melissa Greenblatt and Kevin Collins testified in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

1. Resume, Phil Stetler
2. Map, coverage with existing sites including Pindell School
- 2A. Map, existing AT&T coverage with Pindell School @151 ft
3. June 6, 2014 email to Ian Becker from Charles Schulpler, Transmission Engineering, PEPCO re: no permission for new sites above conductors on PEPCO structures
4. Map, coverage with existing sites (Pindell School OFF)
5. General site data, PEPCO SCAGGSVILLE #38

6. Map, coverage with existing sites and proposed site at Power Pole (65 ft)
7. Map, coverage with existing sites and proposed site at water tank (140 ft)
8. RF Justification, site name: Scaggsville Road, 12200 Scaggsville Road
9. Map, proposed AT&T coverage with Scaggsville Road @ 160 ft
10. Memorandum of lease, March 7, 2014
11. Temple Isaiah, Letter of authorization, August 7, 2014 re: conditional use
12. Google satellite map and list, identification, evaluation and analysis of alternatives to existing PEPCO co-location site
13. Conditional Use Plan
14. June 25, 2014 letter to AT&T from Lawrence Gordon, Executive Vice President, Temple Isaiah, and re: future leases of land to other wireless carriers
- 15A-I. Visibility analysis (balloon test), December 11, 2013
16. FAA 1-A survey, summary report (FAA notice of proposed monopole), February 26, 2014
17. Technical staff report
- 17A. June 12, 2013 email to Jeremy Talman from Jack Waller, Good Hope Presbyterian Church
- 17B. Monopole impact study and report on residential real estate prices for homes and residential land near 12200 Scaggsville Road, Thorne Associates, March 31, 2014
18. Resume, Ivan Caballero
- 18A. Site Acquisition Request Form, Relocation for Pindell School MDU2505
19. Map, coverage with existing sites and proposed site (120 ft)
20. Map, coverage with existing sites and proposed sites (140 ft)
21. Resume, Nick Berté, P.E.
- 22A-I. Balloon test with locations, December 11, 2013
23. Satellite Image, distance between tower location and Ashleigh Knolls streets
24. September 13, 2014 email from Larry Greenblatt to various persons (Fulton Ridge folks), Subject: the next step
25. Community-bounces@lists.ashleighknolls.net, email string, September 21, 2014, Subject [AK-Community] Protest at temple on Rosh Hashanah
26. Community-bounces@lists.ashleighknolls.net, email string, September 21, 2014, Subject [AK-Community] let's not Polarize Ashleigh Knolls Community
- 27A. Photograph, three persons erecting signs
- 27B. Photograph of sign, NEW YEARS RESOLUTION CANCEL AT&T CONTRACT
- 27C. Photograph of sign, PRE SCHOOL PARENTS WHY EXPOSE YOUR KIDS
- 27D. Photograph of sign, 2-5 YR. OLDS DON'T DESERVE RADIATION NOWAYATT.COM
- 27E. Photograph of 3 signs, YOUV'E BEEN MISLED PRESCHOOL KIDS AT RISK, small sign: NO WAYATT.COM, NEW YEARS RESOLUTION CANCEL AT&T CONTRACT
- 27F. Photograph of sign, YOUV'E BEEN MISLED PRESCHOOL KIDS AT RISK
28. Enlargement of AGL May 2014 magazine image depicting two 110' monopoles
29. Photoshop image of tower with co-located antenna
30. Site Plan, expanded tower compound, October 20, 2014
31. Diesel Generator information
- 32A-D. Aerial view and photographs of farm buildings and silo, 12044 Scaggsville Road, owners: Juan and Jeannie Rojas
- 32E. SDAT ownership information, 12044 Scaggsville Road
- 32F. SDAT map, 12044 Scaggsville Road

- 33. Aerial Map, PEPCO power line
- 34. Verizon letter of interest in collocating on AT&T monopole
- 35. SDAT ownership information, 11915 Meadow Vista Way
- 36. Howard County Code Section 17.500, Notice to buyers of the availability of plans for road construction and land use in the County
- 37A. Monthly Voice and Data Volume, AT&T, Pindell School Road
- 37B. Daily Voice and Data Volume, AT&T, Pindell School Road
- 37C. E911 calls, Pindell School Road site

Opponents introduced into evidence the exhibits as follows.

- 1. Chambers Management, Inc. Letter describing Ashleigh Knolls HOA – Board of Directors, August 21, 2014
- 2. Google street view of existing PEPCO transmission tower from Route 216 and Sullivan property at 12064 Scaggsville Road
- 3. Google satellite map, potential alternative sites within a one and two-mile radius
- 4. Google satellite map, Cedar Lane School off Route 216
- 5. Cedar Lane School with existing cell tower in the distance
- 6. Existing AT&T antenna on PEPCO tower
- 7. Wireless communications tower on Howard High School site
- 8. Google map, distance between 7124 Crabbury Court and Tower
- 8A.\* Photograph, Pindell School Road AT&T antenna base
- 9. Google map, location of Opposition balloon test re: Tower – 225 ft
- 10. Photograph, Chris Hoyson driving stake (location) for Opposition balloon test
- 11. Photograph, view of second test (Red) balloon from Patel property driveway
- 12. Photograph, view of second (Red) test balloon from stake location
- 13. Google map, distance between 7204 Fawn Crossing Court and Tower—2682.24 ft
- 14. Google map, blow up of 7204 Fawn Crossing Court and area
- 15. Photograph, Opposition balloon test, 7204 Fawn Crossing Drive, (Melissa Holton residence)
- 16. Photograph, Opposition balloon test
- 17. Photograph, Opposition balloon test, 7204 Fawn Crossing Drive (from second floor of 7204 Fawn Crossing Court)
- 18. Photograph, Opposition balloon test, front lawn of neighboring residence, 7204 Fawn Crossing Drive
- 19. Photograph, Opposition balloon test
- 20. Photograph, Opposition balloon test, view of balloon through Preservation Parcel
- 21. Photoshopped photograph of tower (includes basketball net) based on Opposition balloon test
- 22. Google map depicting distance from tower to 7120 Crabbury Court
- 23. House Data Master, 7120 Crabbury Court (Greenblatt)
- 24. Real estate contract addendum, 7120 Crabbury Court (Greenblatt), 1997
- 24A.\* Photoshopped tower view with multiple carrier antennae based on Opposition balloon test, Moorland Drive & Fawn Crossing Drive, September 6, 2014
- 24B. Photoshopped tower view with multiple carrier antennae based on Opposition balloon test, Fawn Crossing Drive overlooking Crabbury Court, September 2014
- 24C. Photoshopped tower view with multiple carrier antennae based on Opposition balloon test,

- Helmsdale Court, September 9, 2014
- 25A. Photograph taken at 160 ft above Temple Isaiah's property using camera mounted on drone, Ashleigh Knolls and Fulton Ridge
  - 25B. Photograph taken at 160 ft above Temple Isaiah's property using camera mounted on drone, Ashleigh Knolls
  - 25C. Photograph taken at 160 ft above Temple Isaiah's property using camera mounted on drone, Fulton Ridge
  - 26. Copy of Board of Appeals Case No. 99-72E, August 24, 2000, granted religious facility Special Exception for Temple Isaiah religious facility, private school and nursery school
  - 27. PlanHOWARD 2030 introductory letter from DPZ Director Marsha McLaughlin to stakeholders
  - 27A.\* September 2, 2014 email from Jacob Goitom, 11915 Meadow Vista Way, to [Larry@viewpointvideo.com](mailto:Larry@viewpointvideo.com), subject: Clearview Estates
  - 28. September 8, 2014 email from Debbie Pritchard [Larry@viewpointvideo.com](mailto:Larry@viewpointvideo.com), subject: Cell towers, including Google aerial map of Pritchard property on Jamesway Court and tower on Highland Road
  - 29. Comments from showing of Debbie Pritchard property, August 13, 2013 to April 1, 2014
  - 30AB. Photograph of Pritchard Property and tower
  - 31. Temple Isaiah High Holy Day Information Packet
  - 32. September 2, 2014 email from Lori Boone, Howard County Police Department, Public Affairs, to Larry Greenblatt
  - 33A-O. Opposition coverage maps and options maps
  - 34. Photograph, looking east from Patel property
  - 35. Hinduism, time and worship
  - 36. Patel tenant (Royce Evans) letter
  - 37. Photograph, camouflaged monopole
  - 39. SDAT property map, Parcel 506
  - 40. SDAT property ownership information, Map 0041, Grid 007, Parcel 0475
  - 41. Preservation Parcel B Conveyance Deed, Preservation Parcel B, Tax ID # 05-418968
  - 42. Deed of Preservation Easement, Preservation Parcel B
  - 43. SDAT property ownership information, Map 0041, Grid 0013, Parcel 0506
  - 44. SDAT property map, Map 0041, 0013, Parcel 0002
  - 45. Aerial photograph, environmental area near cell tower site
  - 46. Email correspondence from Brian Moody (Howard County Department of Recreation and Parks) to Melissa Greenblatt re: Deed of Preservation Easement for Parcel B, September 15-17, 2014
  - 47. Aerial photograph, forest preservation easements overlay
  - 47B. Aerial photograph, floodplains overlay
  - 48. Aerial photographs, wetlands, Md. Department of Natural Resources
  - 49. Howard County Map, wetlands and US Fish and Wildlife Services, Migratory Bird Program Communications Tower Siting Guidance
  - 50. Deed of Preservation Easement, Preservation Parcels A, B & C
  - 50A&B. Howard County Public Schools Policy 6060
  - 51. Photograph, stockade fence

\* The Hearing Examiner misnumbered these exhibits entering them into evidence. The letter addition is added to ensured continuity in numbering.



Additionally, during the proceeding, the Hearing Examiner repeatedly remarked upon the difficulty of understanding witness testimony and exhibits about several properties absent specific locations or a property address. She therefore instructed the parties to provide her with an address list of all properties referenced. The Hearing Examiner assumes the accuracy of the two lists, but with the necessary caution that the pertinent findings or conclusions of law are not nullified by any inaccuracies.

### FINDINGS OF FACT

For the convenience of the reader, the findings of facts are grouped by subject matter, where possible. Any conflicts in the evidence are resolved under the preponderance of evidence test.

#### I. THE PROPERTY

1. Property Identification. The subject property is located in the 5<sup>th</sup> Election District on the north side of MD 216 about 400 feet east of Fulton Ridge Drive. It is identified as Tax Map 41, Grid 13, Parcel 2, Lot 4 and known as 12161 and 12200 Scaggsville Road (the Property).

2. Property Description. The 20.99-acre Property is the site of Temple Isaiah, a religious facility, private school and nursery school (the Facility) approved as a Special Exception (BA99-72E) in 2000 by the Board of Appeals. A stream runs diagonally through the Property to create two distinct triangular areas. The larger area to the stream's east/southeast is the site of the Facility (the Facility Site). A wide driveway off MD 216 provides access and leads to a large parking lot in the front portion of the Facility Site. The Facility lies to the north of the parking lot. There is a service and trash receptacle area and stormwater management facility to the Facility's northeast and an outdoor play area on the Facility's west side. The remainder of the Facility Site is open lawn.

A driveway running northwest from the parking lot and crossing the stream provides access to the second area, the general site of the proposed Conditional use, which is improved with a single-family detached dwelling and accessory building in the central portion. There are some trees in this area, which

is generally open lawn to the east and south of the dwelling. The Temple Isaiah site development plan shows a well for the dwelling to the west of the accessory building. The septic area is not indicated, but the technical staff report (TSR) suggests it is likely located to the dwelling's east.

3. Vicinal Properties. All adjacent parcels are also zoned RR-DEO. The western Parcel 108 is a 33-acre farm, improved with a recently constructed dwelling located 500 feet from the proposed tower. Parcel B is part of Parcel 506, a mostly wooded Preservation Parcel. More than 700 feet beyond this parcel and a second Preservation Parcel technically adjoining the Property at an acute angle are the Ashleigh Knolls subdivision residential lots. To the east and southeast are the residences of Fulton Ridge Estates.

4. Roads. MD 216 in front of the Property has two travel lanes, east and westbound deceleration lanes and an eastbound pass-by lane. Pavement and right-of-way (ROW) widths vary. The posted speed limit is 45 MPH. The TSR concludes sight distance is not an issue. There is no current traffic volume data for this location on MD 216. According to State Highway Administration data, the traffic volume on MD 216 west of US 29 was 18,390 average daily trips (ADT) as of 2010.

5. The General Plan. PlanHOWARD 2030 designates the Property as "Low Density Development" on the Designated Pace Types Map. The Plan's Functional Road Classification Map depicts Scaggsville Road (MD 216) as a Minor Arterial.

## II. THE PROPOSED CONDITIONAL USE & THE CONDITIONAL USE PLAN

6. Petitioner is requesting approval for a 160' commercial monopole wireless communications tower and fenced equipment compound. The tower would have a 6-foot lightning rod bringing the total height to 166'. The compound would be 25'x 30' in area (the Tower Site). The facility would be located in the smaller northwestern area of the Property about 172 feet north of the existing dwelling and the driveway would be extended to provide access. An 8-foot stockade fence with swing gates on the south side would enclose the Site and landscaping will be provided around the fence. The proposed monopole

would meet all setback requirements. According to the Conditional Use Plan (CUP), the proposed tower would be located 170 feet from the western and common lot line with Parcel 108 and 500 feet from the relatively new dwelling on the property, more than 800 feet distant from the residential lot lines along Fulton Ridge Drive, more than 900 feet from the front lot line and 166-168 feet from the closest northern lot lines. The use would operate continuously and automatically with infrequent maintenance visits. The facility is designed to accommodate additional commercial carriers.

7. Nick Berté testified to being a licensed professional civil engineer and a telecommunications sites project manager with Dewberry Engineers who has worked on more than 2,000 telecom sites. PE21 is his resume. PE 13, copies of the CUP, are the plans he designed, signed and sealed. These plans are designed in compliance with the Zoning Regulations. Concerning the proposed monopole, Mr. Berté testified that at the building permit stage, construction drawings would be designed and prepared by a tower manufacturer. The design would factor in the carriers using the monopole and wind loads set by Telecommunications Industry Association standards.

8. Kevin Collins cross-examined Mr. Berté about the proposed tower location. Mr. Berté explained that the location was determined based on several factors, including storm-water management (SWM), existing trees, setbacks, and on-site well and septic.

### III. RF COVERAGE

#### *Current Location—AT&T Antennae on PEPCO Pindell School Road Facility*

9. Petitioner witness Phil Stetler testified to being the Site Link Wireless zoning entitlement lead for the AT&T communications tower application. PE1 is his resume. He testified to the need for a replacement tower arising from AT&T's inability to meet current coverage needs using existing antennae on the co-located PEPCO (Potomac Edison Power Company) high-voltage transmission tower site known as the Pindell School Road facility. Because PEPCO no longer allows modification to sites above high

voltage transmission lines, AT&T must decommission the site and find coverage elsewhere. A June 6, 2014 email to Ian Becker (of Bechtel) from PEPCO transmission engineering employee Charles Schulper informs Mr. Becker of this policy, which arises from the increasing difficulty of scheduling power outages for cell sites. Mr. Becker provided the email to Mr. Stetler, which was introduced into evidence as PE3. Mr. Stetler also introduced PE8, the RF (radio frequency) Justification statement for 12200 Scaggsville Road, which identifies the main objective of the site as the installation of a replacement site for AT&T's "Existing on Air Site PINDELL SCHOOL," which cannot structurally support the new equipment AT&T intends to deploy for its UMTS and LTE rollout. With PINDELL School decommissioned, the area will have weak AT&T coverage and this site will help AT&T satisfy its current customers and gain new coverage as well.

10. Petitioner Exhibit (PE) 2 and PE2A are radio frequency propagation maps showing the location and coverage of the existing Pindell School location and all existing AT&T facilities. The orange area shows the existing coverage with AT&T's Pindell School antennae installed above the power line and centered at 151' above ground level (AGL), which is 494' above mean sea level (amsl), according to PE5, an exhibit providing general site data about the PEPCO location. The area in green shows indoor coverage provided by the other AT&T facilities. Mr. Stetler explained PE4 illustrates expected indoor coverage with the Pindell School site "off," the white area meaning a lack of indoor coverage. AT&T RF engineers supplied him with all coverage maps. The zoning team asked AT&T RF engineers if the antennae on the PEPCO tower could be relocated at 65' on the PEPCO tower (approximately 20' below the bottom PEPCO conductor as would be permitted per the PE4 email). The RF analysis represented in PE6 shows the resultant indoor coverage in orange, which the RF engineers found to be inadequate. There are significant virtual coverage gaps in coverage when comparing PE6 and PE2, a coverage map showing indoor coverage with all existing AT&T sites introduced by Mr. Stetler, meaning AT&T cannot simply drop to 65' and meet

coverage objectives.

*RF Coverage Objectives (Replacing the PEPCO Site)*

11. Mr. Stetler introduced PE8, which states AT&T's coverage objectives in the search ring area: to enhance AT&T coverage along Route 216/Scaggsville Road, Hall Shop Road, Moorland Drive, the intersection of Browns Bridge Road and Lime Kiln Road, the intersection of Pindell School Road and Johns Hopkins Road and the Fulton community

12. Ivan Caballero also testified about the PEPCO site. Mr. Caballero is an RAN (radio access network) engineer employed by a designated AT&T Mobility contractor. Petitioner Exhibit 18 is Mr. Caballero's resume. He creates coverage and interference studies for the area market using industry RF prediction tools. Coverage map PE2A shows current indoor coverage provided by the Pindell School site, which is the coverage expected inside a home. Coverage map PE4 map shows indoor coverage without the current, PEPCO, Pindell School Road site (with Pindell School "off"). Several opponents, including Larry Greenblatt and Kevin Collins, challenged the need to decommission the PEPCO location.

13. Mr. Caballero explained the process by which the RF coverage objective was established. The study began with an examination of coverage provided by existing AT&T sites, which are depicted on PE4.

Hall Shop: 12833 Highland Road, Highland: a 162' monopole, centerline of ATT location 162'  
Timothy Road: 1200 Ashton Road, Ashton (Montgomery County): 120' transmissions tower  
Fulton: 10905 Johns Hopkins Road, Laurel: 149' monopole, ATT is centered at 129'  
Ednor: Side of 1800 Ednor Road (Montgomery County), transmission tower  
Quietnight: 7500 Grace Drive, Columbia: water tank  
Rooster Court: 8465 Leishear Road, Laurel: transmission tower  
Riverwood Drive: 10400 Old Columbia Road, Columbia: monopole

These locations are important for handoff: as AT&T customers move from the area covered by one of these sites, the handoff from tower to tower must provide continuous coverage in order to prevent dropped calls. The replacement tower search area was determined by a prediction tool (ATOLL by Forsk).

Using this system, the RF team established a search ring. PE18A, Site Acquisition Request Form, Relocation for Pindell School MDU2505, is the search ring for the replacement tower site. The dot in the center of the red search ring is the ideal location for the new site, the closest to the existing site. The .35 radius is the center and the acceptable locations are within the area. Acquisition personnel look for a new site within the ring (the RAD center) and then move out. In addition to this "locational geography," PE18A also denotes two additional search parameters, a minimum 144' tower height at the center elevation (the dot), and a maximum 160' tower height moving out from the center, with the increased height reflecting changing elevations. The total height minimum and maximums, 621' amsl and 636' amsl shown on PE18A include ground elevation and tower height (center elevation).

14. Mr. Caballero then explained the process by which these parameters directed the acquisition team site search through PE12, a Google aerial map showing the location of potential tower sites investigated by the acquisition team, as it relates to PE18A, coverages maps PE6 and 7, and OE3, an aerial map depicting potential sites within a one and two-mile radius of the existing Pindell School Road antennae site. Mr. Caballero discussed and compared the PE2, PE2A and PE7 coverage maps, which his team created. The color green depicts in-building coverage that can be expected indoors (in Mr. Caballero's testimony, indoor coverage). The white areas represent dropped calls in the indoor coverage prediction areas. The current coverage map, PE2A depicts coverage (in orange) with the existing Pindell School site activated at the 151' antenna level on the transmission tower. PE6 depicts expected coverage at 65' on the PEPCO power pole, which is unacceptable. PE7 shows indoor coverage with AT&T antennae located on the Maple Lawn water tank at 140', the Pindell School site off and the other existing AT&T sites on. The orange area shows the expected coverage, which duplicates existing coverage.

15. Mr. Caballero further testified that the proposed Temple Isaiah tower height and location met all search parameters. He evaluated lower tower heights during the process of determining the

minimal height necessary to meet AT&T's objectives. PE19 models coverage with existing sites and a proposed tower height of 120' and a total height of 593'amsl, which does not meet the search parameters and is unacceptable because there is a loss of continuous coverage south of Brown Bridge Road and a coverage gap to the north near Hall Shop Road. PE20 maps the expected drop in coverage from with a 140' height and shows the same coverage gaps at 613'amsl, although to a lesser extent. A 140' height does not fit within the search parameter. The proposed 160'asml tower is therefore the minimum necessary. Between 140' and 160', there is an expected 30 percent loss in coverage.

16. Several opponents cross-examined Mr. Caballero about his testimony concerning gaps in coverage within the white areas of the coverage maps. Mr. Caballero testified that under the model, calls would be dropped. He was also cross-examined about alternative solutions such as turning other existing sites off and adding antennae to the Maple Lawn water tower and the possibility of tilting or shifting the antennae on other sites. Mr. Caballero explained that antennae coverage is sectorized, so tilting may not provide coverage or may interfere with existing coverage. Antennae are sectorized (honeycombed) and their sectorized coverage area control interferences. Tilting would create interference in the sectorized coverage areas. The alternative location sites raised by opponents during cross are presented in Table IV.

*The Amato Team RF Coverage Study*

17. Michael Amato, Ph.D., testified to residing in Ashleigh Knolls. He is an aerospace systems engineer with aerospace undergraduate and graduate systems degrees. He has 25 years of experience designing space systems, a number of which have RF subsystems. Mr. Amato and his team performed their own RF measurements, testing actual coverage using four separate cell phone call and data test approaches at 26 locations shown as outside the current AT&T coverage area on the AT&T submitted

coverage maps (the Amato studies).<sup>1</sup> His testimony and supporting exhibits were intended, in his own words, "to demonstrate a lack of 'due diligence' in searching for alternative site or structure locations because the AT&T team did not use real data on the ground level and the performance prediction maps data is not representative nor does it reflect real results."

18. He introduced OE33.A, which shows the 26 test locations. OE33.B shows the estimated 4G coverage using actual measurements. This map is intended to refute the gap in coverage areas shown on PE2 with no gaps anywhere and shows no practical coverage gap. OE33.C approximates current LTE coverage results. Mr. Amato acknowledged the current tower site might not support LTE, so this exhibit is an approximate coverage map with no tower at all at the Pindell School site, using only surrounding towers and showing functional reliable coverage with high data transfer rates for most of the area. A 65' tower using the existing power line structure would greatly improve this already functional LTE coverage. The Amato team also evaluated alternatives with less adverse impact and options using existing structures.

Option 1. OE33.E shows a new, but lower 100' tower at the proposed location disguised as a tree as has been done at other locations. The prediction models used to estimate cell tower coverage (the Okumura-Hata performance models) on OE33.E show more than adequate coverage with reserve. OE33.F shows 850 MHz coverage for this option using advanced state of the art cell tower coverage software. Three experienced RF engineers ran sophisticated analysis software used in cell tower and other RF design and implementation projects for this option. The parameters and results were checked by the Amato team. The prediction models used to estimate cell tower coverage (the Okumura-Hata performance models) shows more than adequate coverage with reserve. The map shows the coverage for a 100' tower is much larger than AT&T's map for a higher 120' tower. This map shows a 100' tower fills all of the gap areas in question. OE33.E shows an 850MHz coverage map depicting the coverage range in the green circle, average handoff distance in the yellow circle and is intended to show more than adequate coverage.

Option 2. Option 2 uses all existing structures as desired by ATT and the regulations. The design approach is to stay on the existing PEPCO power line tower structure and meet PEPCO's request by lowering the antenna to 65'. OE33.G uses the Okumura - Hata performance models and shows the approximate

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<sup>1</sup> Mr. Amato provided the Hearing Examiner with an electronic copy of his testimony, which he read into the record. Due to the highly technical nature of Mr. Amato's testimony and exhibits, the Hearing Examiner utilized the written version where necessary for greater accuracy.



operating range performance for this lower tower. OE33.H indicates the coverage appears to cover the area in question, even at the edges if the other towers are corrected using the Amato team approach.

Additional Options. OE33.K and .L show a 65' location at the current site PEPCO power line pole with a second low height antenna on a second power line, or a small structure on top of Temple Isaiah as shown on other options include a 65' site at the current PEPCO power line combined with a new 100' tower at Temple Isaiah or the 140' water tower. OE33.M. Additional alternatives include the use of microcells.

#### *AT&T's Rebuttal*

19. In his rebuttal testimony, Mr. Caballero amplified his coverage testimony, said testimony intended in main part as a response to the Amato studies. Concerning the existing Pindell School site, he explained the site meets current coverage objectives from an RF design perspective, although better coverage could be gained. If the antennae could be accessed and/or modified, AT&T would not be looking at another site. Losing coverage does not mean losing all coverage, but rather losing the coverage objective, resulting in weak coverage. Concerning his prior testimony about dropped calls and coverage loss shown in the coverage maps, he clarified that these maps do not show outdoor coverage, only indoor. The coverage objective set forth in PE8 is to provide reliable indoor coverage consistent with the RF Justification for the site. If you have reliable indoor coverage you will have reliable open space outdoor coverage, which would allow persons to stay connected when they leave their vehicles and go into their homes. In other words, the objective is to provide three levels of coverage: indoor, in-vehicle and outdoor or open space. Sandeep Gupta, the design manager approving the PE8 RF justification, is his manager. Concerning the Amato studies, Mr. Caballero testified the RF coverage tests were all performed outside using a different comparison tool. ATT's coverage objective is consistent reliable indoor coverage.

20. On rebuttal, Mr. Talman about the possibility of AT&T using smaller towers below power lines or micro-cells. This approach would help to cover small areas but might cause some interference and would not solve the larger coverage issue. He introduced PE33, a satellite/aerial map highlighting the PEPCO transmission line and showing the PEPCO tower's limited use to fill the coverage gap.

#### IV. DILIGENT SEARCH: LOCATIONS

Note: Findings re: Petitioner's site-specific diligent search for a replacement tower facility location are set forth in Table I (government structures-schools), Table II (co-locations, existing structures and non-residential districts) and Table III (raw land sites-residential districts). Findings re: Opponents' alternative site locations are set forth in Table IV.

##### *General Testimony*

21. Mr. Stetler testified to AT&T frequency engineers providing the zoning team with a coverage needs area and search parameters, including the existing AT&T facilities shown on PE6. The search area cannot be too close to existing facilities because of interference. The team looked further than it normally does because neighborhood groups often ask about other sites, including a water tower located 1.0-1.5 miles from the search ring center, which was not acceptable to the RF team. Having exhausted co-location possibilities, the team then moved to suitable raw land opportunities, raw land meaning the absence of a cell tower/co-location site on commercially zoned land.

22. Petitioner witness Jeremy Talman testified to being Vice-President of Operations for Site Link Wireless. Mr. Stetler reports to him and they work collaboratively. He oversees day-to-day operations and does some site work. He was responsible for all site acquisition work for the proposed facility. Mr. Talman met with Charles Lager, who drove him around to various properties he or his family owns in the area, as well as other properties, Maple Lawn Farms, the Fulton post office and adjacent commercially zoned property on MD 216, and St. Paul's Lutheran Church on MD 216. These properties were in the one-mile radius, but outside the search range and were investigated because the zoning team did not want to exclude any possible co-location site or commercial site if it met RF coverage requirements. Mr. Talman offered his professional opinion that no tower could be built in the area within the northwest intersection of MD 216 and MD 29, because it is too far from the search ring for RF coverage objectives and too close to the Fulton coverage area. A tower in this area might provide additional coverage but it would create

interference in the sectorized coverage areas.

23. Several opponents, including Dustin Hill and Gary Collins, challenged Mr. Talman's reliance on Charles Iager's leasing or decision-making authority as it concerns Iager-owned property, including any property held by an Iager family LLC. Mr. Hill is employed by NV Homes in residential production and sales (primarily permitting), mainly in Howard County. His Iager contact in Howard County is Gene Iager; he believes Gene Iager is the person with the authority over Maple Lawn Farms, being the president of Maple Lawn Farms, which owns the Maple Lawn turkey farm at 11788 Scaggsville Road. Consequently, in his opinion, the zoning team talked to the wrong Iager, having spoken to Charles Iager, whom Mr. Hill believes was the appropriate contact for St. Paul's Church, but not Fulton Station and Maple Lawn Farms. On cross, Mr. Hill explained that he works mainly through Gene Iager's nephew, B. J. Radhe and does not know if Mr. Radhe is a member of the turkey farm LLC. He does not know if Charles and Gene Iager operate their businesses together but assumes they do.

24. Concerning Opposition's charge that Mr. Talman talked to the wrong Iager, Mr. Talman testified on rebuttal that he did indeed speak to the right Iager, Charles, who showed him his properties and identified himself as the owner. He did not want to lease the properties he controlled because he was holding them for future development. He did not specifically confirm Charles Iager's ability to bind the LLC, but knew he was one of two owners.

25. Mr. Hill in his direct testimony queried whether AT&T should have conducted their location diligent search effort within a one-mile search radius of the existing PEPCO antennae location, not the proposed site, which would require AT&T to consider all the locations within this area, including the school properties on Scaggsville Road.

*Government Structures: Schools*

26. Concerning locating towers on county school structures, Mr. Talman initially testified that

some portion of the four-school site/s on MD 216 (Cedar Lane, Fulton Elementary, Lime Kiln Middle and Reservoir High) falls within the one-mile search range or just beyond. On recall, he clarified that a portion of the school property lies within one mile of the existing site, and a little over a mile from the search ring center. Because most of the buildings are one and two stories in height, they could not replace the needed tower height. He emphasized the historical absence of towers on Howard County school property other than the county-owned tower on the Howard High School property. Because he believes county schools would not be a willing landlord, he did not contact the schools.

27. Mr. Collins cross-examined Mr. Talman in reference to OE3, 4, 5, 6 and 7, which depict, respectively the existing Pindell School Road antennae on the PEPCO tower, in reference to any county or school board policy or regulation that would prohibit tower construction on school property. Mr. Talman explained that a tower on county-owned property is a by right location unless it is county school property and that any such proposed tower would have to go through the conditional use process. On further cross, he was unsure of any county school property history allowing towers on school property, including OE7, Google map depicting a tower on Howard High School property. He confirmed that no RF studies were done for the school site properties. He believed the Cedar Lane school was zoned RR-MXD3, being part of the larger Maple Lawn area. The Hearing Examiner questioned Mr. Talman as to his knowledge of any School Board policy concerning cell tower siting on its properties and Mr. Talman replied that he was unaware of any. Several opponents, including Mr. Collins, Mr. Eagles and Mr. Greenblatt, cross-examined Mr. Talman about the extent of his "reach out" to the schools as possible locations, including locating antennae on playfield lights. During this cross, opposition challenged Mr. Talman's testimony about the zoning team's failure to "even make a phone call" to the schools to discuss locating a tower on school land. In his direct testimony, Dustin Hill testified to sometimes contacting the county school planning board/departments, including Joel Gallihue, with questions about his NV Homes project. Mr. Gallihue

informed him by email, apparently, that he was not aware of any cell tower company in recent years contacting the county school planning section about locating a cell tower at that location, but that some citizens have been in contact with staff.

28. The Hearing Examiner questioned Mr. Talman about other factors related to constructing cell towers on school structures and property, including the presence of technicians and other personnel for maintenance and emergencies and he responded that this is an additional consideration. The Hearing Examiner took notice pursuant to Hearing Examiner Rule 10.1, that the tower on Howard High School (see Table I) is a county government facility that was not approved through the conditional use process.

<b>Table I</b> <b>Diligent Search: Government Structures--Schools</b> Exhibits: OE3, OE4, OE5, OE6, OE7	
<b>Cedar Lane School:</b> 11630 Scaggsville Road, Fulton (zoned RR-MXD-3) OE5 shows the school with the existing tower in the distance. Rejected by RF team. Mr. Talman testified that no structure on site is tall enough to meet RAD requirements, being only 20'-40' in height. He did not approach them because they are in the same direction as the water tower and they are a little too far away, even further than St. Paul's Lutheran Church, which the RF team rejected.	
<b>Lime Kiln Middle School:</b> 11650 Scaggsville Road, Fulton (zoned RR-MXD-3) Rejected by RF team. Mr. Talman testified that no structure on site is tall enough to meet RAD requirements, being only 20'-40' in height. He did not approach them because they are in the same direction as the water tower and they are a little too far away, even further than St. Paul's Lutheran Church, which the RF team rejected.	
<b>Fulton Elementary School:</b> 1160 Scaggsville Road, Fulton (zoned RR-MXD-3) Rejected by RF team. Mr. Talman testified that no structure on site is tall enough to meet RAD requirements, being only 20'-40' in height. He did not approach them because they are in the same direction as the water tower and they are a little too far away, even further than St. Paul's Lutheran Church, which the RF team rejected.	
<b>Reservoir High School:</b> 11500 Scaggsville Road (zoned RR-MXD-3) Rejected by RF team. Mr. Talman testified that no structure on site is tall enough to meet RAD requirements, being only 20'-40' in height. He did not approach them because they are in the same direction as the water tower and they are a little too far away, even further than St. Paul's Lutheran Church, which the RF team rejected.	
<b>Playfield lights.</b> Opponents questioned Mr. Talman about using playfield lights. He replied they are too short and not structurally capable of supporting the load.	

Table II	
Diligent Search: Co-locations, Existing Structures, Non-Residential Zoning Districts	
Exhibits: PE 6, 7, 8, 12, 18A, OE3	
Co-Location Sites	
<p><b>Pindell School Road site/65'</b>: the existing site within search ring. PEPCO right of way (zoned RR-DEO) (elevation 494', antenna center AGL-65')</p> <p>PE6 coverage map with existing AT&amp;T tower sites and antennae at 65' on PEPCO power pole. The RF plots coverage at 65', which is unacceptable</p>	
<p><b>Maple Lawn Water Tower</b>: Scaggsville/Murphy Road: (zoned RR-DEO) (elevation-456', antenna center AGL-140')</p> <p>PE7 coverage map with existing sites and proposed site at water tank (140').</p> <p>A site acquisition person submitted this location, which RF team rejected because it was outside search area, within the Fulton coverage area and would not meet AT&amp;T RF objectives at 140' atop the tower. This is the same tower identified as the "B" existing water tower in OE 3. It lies outside AT&amp;T's one-mile search radius. Concerning the construction of a 60-foot tower on top of the tank, which had been discussed during cross-examination of Mr. Stetler, it was Mr. Talman's professional opinion that such a tower would never be approved by the county. He recently sought confirmation of this opinion in a conversation with John Schaeffer, an engineer with the Bureau of Utilities, about co-location opportunities on the tank. Mr. Schaeffer informed him that co-location is possible on the tank below the ball of the tank, but that Howard County bans antennae atop or above such tanks because they do not want people on or in the tank. Mr. Schaeffer reviewed the drawings Mr. Talman sent to him and confirmed that the RAD center would have to be a 113' antenna with a stem and ball, at a location just below a painter's tower.</p> <p>The Hearing Examiner takes notice that the property to the east and south of this water tower (91 acres on the south side of Route 216) was rezoned to R-ED/MXD-3 during the 2013 comprehensive zoning.</p>	
<p><b>SBA Tower Site</b> (existing monopole): 8282 Murphy Road, Fulton, west of 29, south of MD 216 (zoned RR-DEO) (elevation-385', antenna center AGL-120')</p> <p>Rejected by RF team-too far from search ring center (two miles from ideal location)</p>	
Raw Land Sites: (non-residential zoning districts)	
<p><b>Fulton Station/Post Office/Ledo Pizza, Shell Gas</b>: 11835 Scaggsville Road (primary address)(zoned B1 or B2*) (elevation 460', antenna center AGL-175')</p> <p>Rejected by LLC owner(s) (lager and others), not evaluated.</p> <p>This is the same "D" post office site depicted in OE3, which locates it within the one-mile radius, and which is outside the search range but included because zoning team did not want to exclude any possible co-location site or commercial site if it met coverage/RF matters.</p> <p>*PE12 misidentified the zoning as BG and BL</p>	
<p><b>The Mauck Property</b>: 11920 Lime Kiln Road, Fulton. (zoned B-1) Commercial property adjoining Fulton Station. Owners rejected AT&amp;T and it was Mr. Talman's understanding that it was because they were interested in redeveloping the property in the future.</p>	

Table III Diligent Search: Raw Land Sites-- Residential Zoning Districts	
Exhibit: PE12	
<p><b>Good Hope Presbyterian:</b> 12131 Scaggsville Road, (zoned RR-DEO) (elevation-455', antenna center AGL-175')</p> <p>Within search ring (good site), rejected by property owner</p> <p>Jeremy Talman met with Pastor Jack Waller and submitted a lease exhibit. PE 17A is a June 12, 2013 email to Jeremy Talman from Jack Waller, Good Hope Presbyterian Church, informing Mr. Talman of the church's decision to decline locating an AT&amp;T tower on church property.</p>	
<p><b>Maple Lawn "Turkey" Farms</b> (Iager Farm): 11788 Scaggsville Road* (zoned RR-MXD-3) (elevation-467', antenna center AGL-170') Property is owned by Home Farm LLC, which is controlled by brothers Charles Iager and Gene Iager.</p> <p>Rejected by Charles Iager. Within the one-mile radius, but outside the search range and included because zoning team did not want to exclude any possible co-location site or commercial site if it met coverage/RF objectives.</p>	
<p><b>Saint Paul's Lutheran Church:</b> 11795 Scaggsville Road, Fulton (zoned RR-DEO) (antenna center AGL-441') AT&amp;T RF team rejected this site because it did not meet coverage objectives. Located 1.4 miles from the search ring center.</p>	

Table IV Opponents' Alternative Site Locations	
Exhibits: PE23A, OE2, OE3, OE8	
Note: Due to their technical nature, the "Amato" alternatives are included in Mr. Amato's RF testimony in the above section	
<p><b>Temple Isaiah:</b> 12200 Scaggsville Road (zoned RR-DEO). Opponents cross-examined petitioner witnesses Phil Stetler and Jeremy Talman about locating tower in the Temple parking lot, to which they replied it would have to comply with all setbacks and requirements.</p>	
<p><b>The Sullivan property:</b> 12064 Scaggsville Road, Fulton (zoned RR-DEO) Opponents cross-examined petitioner witnesses about locating tower on this site due to proximity of current PEPCO site (OE2). When questioned about whether he approached the Sullivans or considered permitting a tower to be located on their property, Mr. Talman replied that he did not know the address of this property (depicted on OE2 and OE8), which sits south of the Pindell School Road PEPCO location. Based on his experience, they would not allow it. Additionally, a cell tower proposed on a residentially zoned property needs to comply with setbacks.</p>	
Existing water tower (Maple Lawn), the "B" site shown on OE3. See Table I	
Existing cell tower: "C" site shown on OE3. Mr. Talman testified that this is AT&T Hall Shop tower site. See Table I.	
US Post Office, the "D" site shown on OE3. See Table I.	
Existing cell tower: "F" site shown on OE3. See Table I.	
US Post Office, the "G" site shown on OE3. 12975 Highland Road, Highland (zoned RR-DEO)	
No specific testimony on this property	
<p><b>Rojas "silo" farm:</b> 12044 Scaggsville Road, Fulton (zoned RR-DEO) In response to Opponents' queries about locating antennae on the silo on this farm, Mr. Talman introduced Exhibit 32A-D, photographs</p>	

of structures on the property, including the silo, and testified that the silo's condition would not support the antennae or necessary tower height.

**Schooley Mill Park:** 12975 Hall Shop Road, Highland (zoned RR-DEO) Opponents presented this site as an alternative location. There are structures on the property. Zoning team did not evaluate it, being outside search ring. Mr. Talman testified on rebuttal to having initially reviewed aerials of the park. After Mr. Amato's testimony, he reviewed the property and testified to being aware that a carrier, Crown Castle, is looking at the park and Temple Isaiah because it needs two sites for coverage in the areas. Crown Castle is talking to the county about the park and has interest in locating on the AT&T Temple Isaiah tower.

The Hearing Examiner takes notice of a new residential development under construction on the north side of the park.

**Boarman property:** 12126 Scaggsville Road, Fulton, (zoned RR-DEO). Opponent Kevin Collins testified that the zoning team did not investigate this property as a possible site and that the property owner was interested in leasing the property.

**Steve Hutzler property:** 12275 Scaggsville Road (across from Temple Isaiah) (zoned RR-DEO). Opponents testified that the zoning team had not contacted the property owner about locating on this property. Steve Hutzler property: 12275 Scaggsville Road (across from Temple Isaiah) (zoned RR-DEO). Opponents testified that the zoning team had not contacted the property owner about locating on this property.

## V. VISIBILITY: THE COMPOUND, THE TOWER & THE BALLOON TESTS

### *The Compound*

29. In his testimony about the proposed compound, Mr. Berté explained it would not be visible off-site due to its location. Referring to PE14, a June 25, 2014 letter to AT&T from Lawrence Gordon, Executive Vice President, Temple Isaiah (introduced by Mr. Stetler), Mr. Berté stated it reflected the Temple's interest in excluding areas from compound site for future co-locators as a means of increasing lease revenues, which would have to be negotiated. Still, any expansion of the compound area must meet all setback regulations and would require fencing and landscaping.

30. Adjoining property owner and opponent Viram Patel testified to being opposed to the tower because it would be visible from his property, including the second story of his residence. He introduced OE34, which is a photographic copy of the view to the east taken from the second story of his home at sunrise with a hand-drawn image of the tower superimposed on the image. He faces east for his morning sunrise prayers. He explained that his property is an agricultural lot, but not subject to an



agricultural easement, when questioned by the Hearing Examiner.

31. On rebuttal, Mr. Berté testified about the possible expansion of the compound area, introducing PE30, a plan view of an expanded compound area. This exhibit demonstrates that any compound expansion would meet all setbacks. As depicted on the plan, any compound expansion would be enclosed by an expansion of the proposed 8' wooden stockade fence. On cross, Mr. Greenblatt introduced OE51, an impact of a typical stockade fence, which he testified would allow the compound interior to be visible. The Hearing Examiner questioned Mr. Berté as to whether the existing or an expanded compound, and its interior, would be visible from the Patel second-story window based on OE34, a photograph depicting the view to the east. Mr. Berté's response was that the compound as proposed or as expanded would not be visible because the trees along the common property line would block the view. The Hearing Examiner queried Mr. Berté about his knowledge of a 2012 federal law concerning expansions/modifications of tower base but Mr. Berté did not have specific knowledge about it.<sup>2</sup>

### *Balloon Tests*

#### The AT&T/Dewberry Test

32. AT&T, through Bectel, hired Dewberry to perform a visual impact study, which was Mr. Berté's charge. He conducts balloon tests in accordance with standard procedures. He drives around to the balloon's north, south, east and west and tries to get pictures as close to the balloon on area road

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<sup>2</sup> The Hearing Examiner was referring to Section 6409(a) of the Middle Class Tax Relief Act, which basically declares that states and local governments "shall approve" "modifications" of wireless facilities which do not "substantially change" their physical dimensions. It states that "Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." The term "eligible facilities request" is defined to mean "any request for modification of an existing wireless tower or base station that involves - - (A) collocation of new transmission equipment; (B) removal of transmission equipment; or (C) replacement of transmission equipment." Section 6409(a)(2).

rights-of-way without going onto private property. If the balloon is not visible, he does not take a picture. If it is visible, he selects the one photograph each from the north, south, east and west locations closest to the balloon. He then photoshops a cell tower photo onto the location of the balloon (which is photoshopped out) and creates before and after images.

33. Mr. Berté used a GPS system to locate the tower site. Because the proposed tower is 160', he tied a no stretch string to a stake in the ground to support balloon uplift, attached a 6.0' diameter helium-filled balloon to the string and flew it at 166' (160' tower height + 6' antennae height.) The balloon test for the proposed tower is represented by PE22, a map depicting the 8 locations from which he took 8 photographs to demonstrate the visibility of the balloon, or lack thereof. Although he presented Mr. Stetler with the four final photographs introduced by Mr. Stetler as PE15, he actually took eight photographs. Mr. Berté introduced PE22A-I, which show where he photographed the balloon on December 11, 2013. Mr. Berté further testified the four photographs in the PE15 balloon test photographs introduced by Mr. Stetler as PE15 are the same as PE22B-E. The four submitted as PE15 are asterisked. The balloon is visible in five of the eight photographs.

- \*22B. View of balloon from parking lot in front of synagogue, *visible*
- \*22C. Looking east on MD 216, toward balloon, *visible*
- \*22D. Looking east at Browns Bridge Rd. toward Scaggsville Rd. and balloon, not visible
- \*22E. Looking east toward balloon from Ivy Creek Stables on Browns Bridge Rd., north of MD 216, not visible
- 22F. Looking south toward balloon from Crabbury Court, *visible*
- 22G. Looking southeast from Browns Bridge Rd./Moreland Dr. toward balloon, not visible
- 22H. Looking west along Scaggsville Rd., to balloon from MD 216, *visible*
- 22I. Looking southwest to balloon from Fulton Ridge Dr., *visible*

He drove up in Ashleigh Knolls, on Downing Court and Chardon Court. With the exception of Crabbury Court, he did not recall any of the "courts" having visibility of the balloon when he tried to get close. He tries to show the balloon correctly without going onto private property.

34. Concerning the balloon test, Mr. Berté testified on cross, that his view of the balloon at the

bottom of the Crabbury Court cul-de-sac was blocked by a house. Further up Crabbury Court, which increases in grade, the tower might be more visible but he could not recall seeing the balloon because he focused on getting as close to the balloon as possible. If he moved closer in, the balloon would not be visible on public property because a house blocked the view (seen in PE22F). It might be visible if he moved to the right or left.

35. On rebuttal, Mr. Berté testified that he had not driven every street in Ashleigh Knolls.

The Greenblatt-Hoyson Test<sup>3</sup>

36. Opponent and Ashleigh Knolls resident Chris Hoyson testified about Opposition's balloon test, which he stated is intended to demonstrate the true visual impact of the tower on the community and the inaccuracy of the Dewberry test. The balloon test team purchased a 5.6' diameter stormbuster balloon and performed the test on the adjacent Patel property about 60 feet of the common property line with Temple Isaiah or about 225 feet west of the proposed tower site, as depicted on OE9, a Google satellite map. The visibility tests were conducted on September 8 and 9, 2014. In selecting the balloon test location, he relied on Howard County map locations showing the "Patel" location as 10' higher in elevation than the tower site; for this reason, he reduced the balloon string length ten feet, for a total length of 156 feet. He introduced OE10, which shows him driving a stake into the ground at the Patel location. OE11 shows the balloon from Mr. Patel's driveway, looking east. OE12 is a close up of the balloon from the base/stake, at the OE10 location. Mr. Greenblatt was the photographer. On cross, he stated the stake is about 60' off the property line and that OE13 indicates a 473' elevation at the tower site. When questioned, he testified to having a civil engineering degree, but he is not a licensed professional engineer.

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<sup>3</sup> The Hearing Examiner notes some confusion in the dates Opponents referenced about when photographing and/or seeing the opponent balloon, a de minimus mistake. There was a prior attempt using different balloons, apparently, which the Hearing Examiner excluded from evidence. The Greenblatt/Hoyson test dates are correct.

He works in construction as a civil engineer design construction and management with a civil engineering component. He is the national coordinator for transportation and other types of projects.

37. On further cross, Mr. Hoyson stated he is not familiar professionally with Howard County, but it is typically the case that zoning approvals come before building permits. He is, however, concerned about environmental site and construction issues because the CUP plan (PE13) is "issued for construction," which means a contractor can do the work in the field. He would have more confidence if there were further county review, particularly environmental review, before someone is allowed to build based on the plans. When asked, he noted his unfamiliarity with NEPA or Section 106 environmental reviews. He is aware of the site development process and acknowledged that engineers get involved at the building permit stage.

38. Mr. Greenblatt introduced OE24A, B and C, which he testified are intended to show the true visual impact of the tower, and which can only be properly appreciated from a distance. These three images photoshop the proposed tower with four carrier antennae onto opposition balloon test photographs taken on September 6, 2014 at three different locations:

- OE24A. Moorland Drive & Fawn Crossing Drive (the main intersection in Ashleigh Knolls), located at about 2,758' from the tower site
- OE24B. Fawn Crossing Drive overlooking Crabbury Court
- OE24C. Helmsdale Court. The tower location on the photographs offset the location of the balloon test on the Patel property

The balloon was flown at a 494' elevation with winds 5-10MPH and a 166' tower elevation. Mr. Greenblatt's employee, a professional graphic designer, did the photoshopping and used a photograph of an existing tower off MD 108 in Clarksville. Mr. Greenblatt did not know the specific type of the antennae depicted or whether they were AT&T antennae.

39. Opponent and Ashleigh Knolls resident Catherine Michele Hayden testified to residing at 7213 Downing Court. She did not oppose the Temple Isaiah special exception. Referring to PE23, she

testified to the accuracy of the Google map, but disagreed that her house is closer to the tower site than the 1,887' shown on the map, believing it lies about 1,740' based on opponents' measurements. (The Hearing Examiner noted that the 1,887' measurement appears to measure the street location, whereas Ms. Hayden's property, which has a pool, is on the east side of Downing Court.) She believes the tower will be visible when there are no leaves on the trees. On cross, Ms. Hayden testified that since she moved to Downing Court, the Temple and Maple Lawn have been built. She also testified about Opponents' balloon test conducted on September 8 and 9, 2014. She learned about the test from an email apparently sent from Larry Greenblatt. During one of the two days the balloon was flown, she was in her pool in the afternoon and could not see it. She did observe it from her neighbor's backyard deck (7216 Downing Court).

40. Opponent and Ashleigh Knolls resident Melissa Holton testified to residing at 7204 Fawn Crossing Court. She introduced OE13 and OE14, Howard County floodplain insurance Google satellite maps showing, respectively, a 2682.24' distance between her property and the tower, and a red "x" marking the location of her property. Opponents' balloon test was conducted on September 6, 2014 and she observed the balloon Saturday, September 6, from 2:30 pm to around 4:00 pm. She photographed the red balloon from various locations introduced as OE15-21. She took the photographs with her iPhone without zooming and she believes the balloon would have been more visible if wind conditions were different. These photographs show the visibility of the balloon from her second story window, in the front lawn of a neighboring residence, from the front, southern edge of her yard, facing southwest and from a neighbor's property (the Amatos) overlooking the preservation parcel. OE20 is a photograph superimposing the tower, with four carrier antennae, onto the location of the opposition balloon, which Ms. Holton believes better represents the true visual impact.

41. Ms. Holton also testified that she always saw the balloon driving through the

neighborhood. It was her opinion that the tower's visibility would affect the value of her property, having once worked as a real estate agent. She had no notice that the largest cell tower in Howard County could be built nearby; no one envisioned the largest tower in the county would be built there. When questioned by the Hearing Examiner about the basis for her belief that this was the tallest tower, which the Examiner explained was incorrect, Ms. Holton was unsure how she came by this information.

42. Opponent and Ashleigh Knolls resident Larry Greenblatt testified to residing at 7120 Crabbury Court. He introduced OE23, a Howard County floodplain insurance Google satellite maps showing a distance of 986.36' between his property and the tower site. When he purchased his property in 1997, he paid a \$20,000 lot premium, as shown in OE23, a copy of a House Data Master for 7120 Crabbury Court, which he argued allowed him to live with woods on the preservation parcel in perpetuity, as he was led to believe. OE24 is a real estate addendum for 7120 Crabbury Court, which he explained concerns information about reviewing the county general plan, policies map, land use map and highways map. In his view, the tower's visibility will have an adverse impact on his property.

43. In his rebuttal testimony, Nick Berté challenged the accuracy/method of the Greenblatt/Hoyson balloon test photographs, opining that the balloon and photoshopped tower appear to be larger than they should be based on their distance. Opponent Larry Greenblatt contested this testimony. On cross, Petitioner introduced PE28, an enlargement of an image from the May 2014 AGL (Above Ground Level) Magazine depicting two 110' monopoles illustrating how distance alters visual perspective.

44. On rebuttal, Jeremy Talman reviewed OE42, the AKHO Parcel B preservation easement, which in his opinion protects the land, but not views of adjacent parcels. He read into the record an easement purpose statement on page 2. "The purpose of the Preservation Easement is to preserve and protect the environment of the Preservation Parcel and to maintain the open space values of the

Preservation Parcel and the dominant scene, historic, cultural rural, agricultural, woodland and wetland character of the Preservation Parcel.

*Tower Design Alternatives*

Note: See the Amato Studies in Part III, for Opponents' design alternatives.

45. When questioned by the Hearing Examiner, Mr. Berté explained the difficulty of making the tower less visible through a stealth, pencil or slick stick monopole with interior antennae. The equipment and antennae do not fit easily within the pole. The four antennae proposed to be located on the lattice tower (depicted on the CUP elevation view) would have to set vertically on the stealth pole, on lower RAD centers, which would affect RF propagation engineering as antennae are located further down on the tower. Because the flagpoles are tapered, about 40' of pole space would be needed. AT&T is proposing 12 antennae, four per sector. In the flagpole, only three antennae at 160' could be accommodated (three sectors of 120 degrees each). Consequently, the next carrier would have to go lower, or higher by extending the flagpole, or even building another tower. He does not believe "LTE" equipment can fit or work within a flagpole. Mr. Berté testified that the last one he worked on for AT&T was about four years ago. Other stealth techniques include monopines, church steeples, or painting towers sky blue. The latter does not limit the number of carriers on a tower. In his rebuttal testimony, he addressed Opposition's alternative technology proposals, explaining the limited success of DAS in rural areas, and the conflict between the proposed alternative and AT&T's coverage needs.

46. In his direct testimony, opponent Dustin Hill discussed the option of disguising the monopole and introduced OE37, a copy of a photograph of a monopole cell tower disguised as a pine tree (a "monopine"), which is visible from Route 200, the Intercounty Connector (the ICC) in Montgomery County, near Layhill Road. He did not know when it was erected. Mr. Hill took the photograph around September 22, 2014 from about 200 feet away. Although he has driven along the ICC about five times, he

had not noticed it until his boss told him about it and he went looking for it on September 22, 2014.

## VI. PROPERTY VALUES AND ECONOMIC IMPACT TESTIMONY

### *The Thorne Impact Studies*

47. Petitioner witness Oakleigh J. Thorne testified to being a certified general real estate appraiser in the State of Maryland and a member of the Appraisal Institute. PE17B is a monopole impact report on residential real estate prices for homes and residential land near 12200 Scaggsville Road prepared by Thorne Associates on March 31, 2014. The report indicates the proposed facility will not contribute to a devaluation of the property values in the proposed tower neighborhood, and will have no negative impact on marketing period or selling price. These conclusions are predicated on his research/impact studies of two Howard County communities, the results of which are presented on pg. 7 of the report. The studies compared two subdivisions where there is homogeneity of the housing stock—similar homes types—using four pairs of similar houses to study, each pair having one house near the cell tower or other facility and one house not near it. He collected data on the sales prices of the homes and compared the sales prices of those in the viewshed or nearby area of a cell tower with those that sold within a couple of months that those not within view of the tower, based on the price per square foot. The goal of the comparison is to gauge parity between sales prices of houses in or outside the viewshed/area. The studies make two conclusions: 1) the sale of residential property with a view of a communications tower is not a motivation to offer a lower than market price for the property, and 2) the proposed, 160' monopole will not have a negative economic impact on surrounding properties or the general neighborhood at the subject site. It was Mr. Thorne's further testimony, as the Hearing Examiner understood it, that the data is not statistically significant, owing to the small sample.

### *Tom Pirritano's Opinion*

48. Opponent witness Thomas Pirritano testified to being a certified general real estate



appraiser with all the designations and a past-appointed chair of Maryland Appraisal Commission and Home Inspection. He specializes in residential appraisals, has been an appraiser for about 30 years, mainly in Howard County and has completed in excess of 15,000 appraisals. When appraising residential property, he examines the neighborhood for positive and negative influences, especially school districts, which drives demands in certain areas. In his experience, the presence of cell towers makes an 8-10 percent price difference in Howard County in the price ranges similar to those in Ashleigh Knolls.

49. His appraisal methodology has some similarities to that of Mr. Thorne, but differs in substantial ways because Mr. Thorne is primarily a commercial appraiser using square footage as the primary factor. With residential property, you are examining the buying and selling patterns in a specific area on an almost daily basis. Negative influences like overhead power lines, a cell tower, a pipeline or an expressway are outside a property's perimeter and therefore not curable. Therefore, when he appraises a residential property, he looks for sales of similar properties (size, age, and condition), where there are negative influences and compares them with properties lacking such influences.

50. Mr. Pirritano questioned Mr. Thorne's methodology, where he looked at 35 sales and did not find one MLS negative comment about the presence of cell towers. He appraised all 55 houses in Clearview Estates when they were new. He is aware that the original property owner contracted with AT&T for the cell tower before the houses were built, which is not the case in Ashleigh Knolls where properties were purchased before the presence of a tower. The two most recent sales in Clearview Estates were on either side of the tower and when he reviewed the sales two weeks ago, he observed they sold for ten percent less than other properties. Of the five sales in Clearview, the properties further away sold for more. He also testified that the unprecedented increase in sales in the broader Clearview community is due to schools, which is the driving force behind residential sales prices, a factor neglected by Mr. Thorne. With cell towers, the asking price is below market and the sales time is longer. Another area

suffering from the presence of cell towers is Highland Road, where he appraised four houses near a cell tower. The presence of a cell tower, which he believes is a negative aesthetic factor, increases sales time.

51. On cross, Mr. Pirritano disagreed with Mr. Thorne's valuations based on price per sq. ft., which is a commercial standard that did not use para (comparable) sales valuations. He also agreed that every home in Clearview Estates had a view of the cell tower. Concerning his testimony that a view (apparently) of a cell tower results in an 8-10 percent decrease in value, Mr. Pirritano testified that you would compare Clearview to an area with similar properties and schools and no monopole, with the resultant difference in sales prices being the negative affect of the tower. When questioned about which specific neighborhood he would look at, Mr. Pirritano said he would go to Pointers Run east of MD 108, which has about 200 homes, where the average home price is \$750,000-\$800,000 and all students go to River Hill High. He has no specific comparison data, but in his professional opinion, the comparison is justified. He does not know the specific school districts for Clearview and Pointers Run.

52. Concerning his testimony about the two properties sales next to the Clearview tower selling for 10 percent less than the asking price, he explained that three weeks ago he looked at the sales of the two homes. The first, 11915 Evening Court, recently sold in 2014 and had been on the market for 144 days, with a possible prior listing. The second, 12118 Dusk View Court sold on 1.27.14, had been on the market for 53 days, with a possible prior listing and sold for \$900,000 with \$10,000 toward closing costs. These homes sit near the base of the tower.

53. Concerning Ashleigh Knolls, Mr. Pirritano testified that the homes on Crabbury Court are a good distance from the proposed tower, not within the fall area, but within visible distance. In his opinion, a view of a cell tower has an impact, but to calculate the impact would require specific appraisals. He does not believe the compound would be visible. To his knowledge, no trees need to come down in the buffer area next to the properties on Crabbury Court for which a premium was paid. Properties within the visual

sight line of the cell tower would be negatively impacted in terms of sales price. If the height was lowered, there would be no negative impact on Crabbury Court, but it would still be visible elsewhere. When questioned by the Hearing Examiner about his testimony on the negative property sales impact of cell towers, he testified that the view of a cell tower would always have a negative sales price impact on all properties with the view.

*The Greenblatt Study*

54. Larry Greenblatt conducted his own investigation of the effect of cell towers on property values by visiting Clearview Estates and one other neighborhood where a cell tower was located and talking to a neighbor in each community. The results of his study are intended to show the negative impact on property sales caused by nearby cell towers.

55. While visiting Clearview Estates, he met Jacob Goitom, who resides at 11915 Meadow Vista Way. A subsequent, September 2, 2014 email from Mr. Goitom to Mr. Greenblatt, relates Mr. Goitom's concerns about the cell tower as it affected his decision to purchase a home in Clearview. According to the email introduced by Mr. Greenblatt as OE27A, Mr. Goitom did not buy a house closer to the cell tower; he instead purchased another property for which he paid about \$50,000 less than the asking price (shown on the Clearview Estates map in the Thorne Study as "Active#1, Lot 24" (PE17B). The last sentence states: "I'm not an expert in this but I'm sharing my personal experience and thought process when we purchased our house and I believe having an antenna/tower next to a property will negatively affect the property value and/or scare off potential buyers."

56. During his field expeditions, Mr. Greenblatt also met Debbie Pritchard, who at the time resided at 5415 Jamesway Court, apparently, off Highland Road in Clarksville. Mr. Greenblatt introduced OE28, a September 8, 2014 email from her to him, including a Google satellite image of her property and a lattice tower on Highland Road. The property is located on the southeast cul-de-sac and about a "nine-

iron" away from the tower. The email states in pertinent part as follows.

We put our house on the market at the end of July 2013 for \$800,000 thinking that would be aggressive as 2 other houses sold in our general vicinity for \$820,000 (which was is the court across from Jamesway) and another about a mile and a half down Highland for \$845,000. We used a reputable realtor who knows the Clarksville area very well and had the comps to justify our sales price at the time. We had 91 showings in 6 months and at the end of 6 months had dropped the sales price down to \$725,000 . . . We finally sold our house for \$680,000 . . . It took a year and with over 90 showings. Several comments were that the tower was an issue . . . So now we look at this type of location as just one more thing for people to think about. It's like living on a busy street, having a major highway in your backyard or living near a rundown area. Keep in mind that when it is time to sell, you might wind up with getting a price lower than one would pay for a similar home without the tower issues.

(The email thread also includes an email from Mr. Greenblatt (at the bottom of page 2 of 3) which was not admitted into evidence.) OE29 is a list of approximately 91 comments from showings of the Pritchard property between August 1, 2013 and April 1, 2014, 11 of which comment on the cell tower as a concern. OE30A is a photograph of the dwelling and OE30B, a photograph of the lattice tower taken from the Pritchard property.

57. On rebuttal, Jeremy Talman offered his opinion about Ms. Pritchard's email and related comments. The tower may have a telecommunications tower component, but the panels and tower size suggest a different primary use. The Pritchards paid \$103,000 for the property, it sold for \$680,000 and the county assessed it for \$665,000, per SDAT. He also researched the property on Redfin.com, a real estate site. He reviewed the listings and agent comments, which did not include comments about the tower, but included comments about dated cabinets and laminated countertops. The basement was painted Ravens purple.

58. Concerning OE27A, Mr. Goitom's email comments about the effect of the Clearview Estates cell tower on the purchase of his property, Mr. Talman explained on rebuttal that the property is highlighted in the Clearview Estates portion of the Thorne Study, which shows it as an active listing with an \$849,900 sales price on March 14, 2014. He also pointed out this comment about the property on page

6 of the study: "The active listing (views of the top half of the monopole) is reporting a very long 206-day marketing period; however, the house is considered overpriced (\$260.00 per foot) until the owner drops the cost to about \$225.00 per foot consistent with other sales of similar profile." He introduced PE35, the SDAT information on the property, which gives the sales price, \$830,000, \$19,000 less than the listing. Mr. Talman explained the sales price works out to about \$254.00 per square foot.

*Testimony of Leslie McGowan*

59. Opponent Leslie McGowan testified to residing in Ashleigh Knolls at 7124 Crabbury Court. She introduced OE8, a Howard County floodplain insurance Google satellite map showing the distance between her property and the cell tower as about 903'. She paid a \$20,000 premium for her property because it adjoined a preservation parcel. Her driveway is on the right in the AT&T balloon test exhibit. She will have a constant view of the structure during her daily activities. On cross, Ms. McGowan testified that she will sometime sell the property, maybe in 5-10 years and that the tower's visibility will negatively affect the value of her property. She further testified on cross to the premium charge being connected to the fact that no one could build on the wetlands in the wooded preservation parcel, which is not changing. She also believes the premium she paid for a wooded lot view in her back yard means that she would not view any house or lot beyond the preservation/buffer area and is entitled to a clear view forever in the skies.

*Testimony of Michele Hayden*

60. Opponent Catherine Michele Hayden, who testified to residing at 7213 Downing Court, which she believes lies about 1,740' from the tower site, based on opponents' measurements, expressed concern that the cell tower will make her home less marketable and as a consequence, is concerned about making improvements. When questioned on cross as to why she thought the tower would lower her property values when she could not see the opposition balloon from her property, she was not sure its

height was correct, nor did she know from where the balloon was raised.

*The Dustin Hill Approach*

61. Opponent Dustin Hill, a residential real estate professional, challenged the Thorne Study methodology, which relies on old data in his Clearview Estate portion of the analysis. The original study used data from around 1998; this study was referenced in *AT&T Wireless v. Mayor and City Council of Baltimore*, 123 Md. App. 681, 720 A.2d 925 (1998), a cell tower case. He also takes issue with what he believes is a methodological shortcoming, the stigma of future buyers' perception of your property factor. While things like power lines may not be an issue for a current buyer, it may be relevant to a future buyer. Mr. Hill supported this opinion by describing the multiple decisions factoring in his ultimate purchase of a residential lot in Fulton Ridge Estates, 12131 Fulton Ridge Drive. His red stone residence is the westernmost lot at the end of Fulton Ridge Drive and is visible in the last two photographs in PE15 (Existing Location 4, View West from Fulton Ridge Drive). The first photograph shows the red balloon in the background, and the second, the photoshopped tower. In his opinion, property values in Clearview are to be distinguished, because the homes there always had a view of the cell tower, whereas his community did not. Mr. Hill characterized this situation as a "time" factor, as the Hearing Examiner understood his testimony. He does not know how much value a buyer would assign to the tower, but buyers discriminate for all kinds of reasons and the tower will detract from its value. A negative value will be assigned to his house if there is a visible tower.

62. When crossed about his opinion that there is a difference in impact between residential sales in a neighborhood where there is an existing tower and original residential sales in a neighborhood where a tower was built post-development, Mr. Hill referred back to PE15, which suggests to him that a negative value would be assigned because of the cell tower. When asked if he had any reason to challenge the Clearview Estates study, he replied that it is not comparable to his neighborhood because his

neighborhood was built when there was no tower.

63. On further cross, Mr. Hill testified to residing about 1,000' or more from the PEPCO transmission line and about 900 feet from the proposed tower site. He is an adjacent property owner to the Temple Isaiah property. He cannot see the PEPCO tower from his house but can see it somewhat from his driveway. He chose this lot because houses and a large tree on the adjacent lot would block the view. He bought his lot in 2009 and moved in December 2009. His was the first home built and at that time he had more of a view of the PEPCO tower. One reason he purchased his lot was that it was the furthest away from the PEPCO line. The well yield was probably the second reason he chose the lot. He does not believe his lot was the most expensive. He did see the plan showing the building restriction lines for each lot. Mr. Hill also amplified his testimony about assigning values to particular lots, which is what he did when he purchased his home. Values are assigned for everything, product, square footage and topography, the home site. In his opinion, individual buyers assign the most value to the home site. He also believes the value of his property would drop the longer his house is on the market.

*Testimony of Viram Patel*

64. Viram Patel, the adjoining property owner to the west, testified to leasing his property for an equestrian riding stable and boarding facility. He introduced OE36, a letter from Royce Evans of Ivy Creek Stables, which operates the facility. The letter explains the cell tower would affect day-to-day operations of the farm and require an unknown adjustment period during and after construction, which will be disruptive to horse training, resulting in lost revenue and vet bills from spooked and distracted horses. Boarders and students have already asked questions about possible health risks. Noise from the antennae will cause the horses to have health problems. The letter explains the cell tower would be disruptive to horse training during an unknown adjustment period during and after construction, resulting in lost revenue and vet bills from spooked and distracted horses. Boarders and students have already

asked questions about possible health risks. Noise from the antennae will cause the horses to have health problems. On cross-examination, Mr. Patel testified that when he redeveloped his property with a 5,600sf dwelling, the horses were kept inside during construction, so the associated activities had no impact on the horses. When asked, Mr. Patel did not know of other stables/boarding facilities near cell towers. When asked by the Hearing Examiner if increased parking during high holy days affect the horses, he did not know because the temple is not visible and he does not know if there is any increased noise that would affect them. He additionally explained that the riding ring where the horses train is about 100 feet from the property line. The field where the horses roam goes up to the property line.

65. Mr. Talman on rebuttal addressed Ms. Evans' concerns about noise. The antennae do not produce noise, being highly familiar with telecommunications facilities.

## VII. SAFETY

66. Mr. Greenblatt introduced into evidence OE31, a copy of Temple Isaiah's High Holy Day Information Packet (2014/5775) as proof of a lack of security and safety in the community. Page 6 includes this caution.

Due to the current escalating conflict in the Middle East and other world events, the HHD committee has initiated appropriate additional security during all services at the Temple and at Centennial Park for this year. Congregants can help by following parking instructions and showing the appropriate tickets for each service as they enter the sanctuary. We thank you for your cooperation and we look forward to a meaningful High Holy Days.

Mr. Greenblatt also introduced OE32, a September 2, 2014 (apparently) email from Lori Boone, of the Howard County Police Department of Public Affairs, directing Mr. Greenblatt to contact the "security director of that Institution directly." The email informs Mr. Greenblatt "[t]he police department assists citizens, organizations, and businesses, at their request, when there is concern for safety. Sometimes the response is related to general concerns, such as traffic safety, direct or perceived threats, or international incidents that occasionally rise to a heightened level of concern in the U.S. The department sometimes



uses unmanned police vehicles at locations to provide a heightened level of security. We have used them at shopping centers during the holidays and other locations based on specific concerns expressed by the business or organization."<sup>4</sup> (This email thread includes an August 30, 2014 portion of an email from Mr. Greenblatt that was not introduced into evidence.) In his opinion, the placement of a cell tower on synagogue property warrants denial of the application because of the potential threat to the community and the total absence of security at the Tower Facility. It was his further testimony that the conditional use application requires a community to be safe.

67. Mr. Greenblatt and other opponents expressed concern about the safety of the Tower Facility as it concerns the proposed diesel generator, access to the facility and accurate emergency contact information. Mr. Greenblatt introduced OE8A, a photograph of the existing PEPCO antennae base, which is unenclosed.

68. On rebuttal, Petitioner witness Nick Berté testified to this base being located in a PEPCO easement and that PEPCO would not allow fences around the equipment because it needs access to the poles for work. Concerning the proposed generator, Mr. Berté introduced PE31, spec sheets for a GENERAC industrial diesel generator similar to the one that AT&T uses. The baffling shielding and exterior enclosure shown on the last page blocks noise. If all four carriers had generators, they would meet noise ordinances around the country. The diesel fuel itself is encapsulated by a double wall tank with an alarm on both the inner and outer tanks, with space between the tanks. The alarms are silent and if activated, go directly to GENERAC, which would send someone out immediately to seal the tank. He was worked with about 200 of these generators for Verizon and AT&T. The FCC does not require backups, but AT&T installs them to ensure customers do not lose service.

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<sup>4</sup> The Hearing Examiner took notice of the occasional need for police department security at her hearings.

69. Petitioner rebuttal witness Brian Harrison introduced PE39C, a graphic showing 202 emergency calls E911 calls between April 1 and September 1, 2014. Mr. Harrison testified that these E911 calls were made in reliance on AT&T's ability to provide coverage to the area.

*Environmental Concerns*

a. On-Site

70. Chris Hoyson testified to being concerned about the ability of construction equipment to traverse the stream in the area where the channel is deteriorating.

71. Melissa Greenblatt testified to being concerned about the impact of the Tower Facility on three forest conservation easement areas on the Property. These easements are depicted on OE45 and 46 (see her testimony re: off-site environmental concerns).

b. Off-Site

72. Opponent Melissa Greenblatt testified to being concerned about the tower's impact on "lots of interesting environmental areas" off the property, including adjoining preservation parcels, forest conservation easement areas, the Hammond Branch stream and nearby floodplains. She introduced O45, an aerial satellite map provided to her by the Howard County Department of Recreation and Parks, which calls out these areas. She designed the map but a person in her husband's employ, Ben Finkel, a graphic designer/cameraman, produced the map. Ms. Greenblatt also introduced OE46-49, which are her sources for OE45.

- OE46. Email correspondence from Brian Moody (Howard County Department of Recreation and Parks) to Melissa Greenblatt re: Deed of Preservation Easement for Parcel B, September 15-17, 2014. The email thread traces Ms. Greenblatt's efforts to obtain information about preservation and forest conservation easements for Ashleigh Knolls Preservation Parcel B maintained by the Howard County Conservancy, Ten Point Properties Parcel B and three conservation forest easements on the Temple Isaiah Property. (This email thread includes an August 30, 2014 portion of an email from Mr. Greenblatt that was not introduced into evidence.)
- OE47. Aerial photograph, Recreation and Parks, Natural Resource Division, with forest conservation and open space overlay
- OE48. Aerial photograph of wetlands. Source: Md. Department of Natural Resources. When

- questioned by the Hearing Examiner, Ms. Greenblatt did not know if they are regulated wetlands
- OE49. Aerial photograph, floodplains overlay. Source Howard County Digital Floodplain Insurance Rate map and US Fish and Wildlife Services, Migratory Bird Program communications tower siting guidance
- OE50. Deed of Preservation Easement for Preservation Parcels A, B & C

Ms. Greenblatt is concerned about the tower's impact on these environmental areas, the tower being 160 feet from the northernmost closest preservation parcel, the location of the Hammond Branch stream, a forest conservation area and floodplain. The vicinal wetlands shown on OE45 in a red circle is located on the Patel property. She is also concerned about the effect of the tower on wildlife and birds in these areas and for this reason referenced the U.S. Fish and Wildlife's 2000 Service Guidance on the Siting, Construction, Operation and Decommissioning of Communications Towers (OE49), which under Recommendation 5, states "[i]f at all possible, new towers should be sited within existing "antenna farms" (clusters of towers). Towers should not be sited in or near wetlands, other known bird concentration areas (e.g., state or Federal refuges, staging areas, rookeries), in known migratory or daily movement flyways, or in habitat of threatened or endangered species. Towers should not be sited in areas with a high incidence of fog, mist, and low ceilings." In her view, the application should be denied because AT&T did not present any information in the petition or any witness testimony to demonstrate compliance with § 131.0.N.e, which requires a finding that the proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere. She believes the tower will cause greater adverse impacts because there is such a concentration of environmentally sensitive areas—"a lot of interesting stuff"—in the vicinity, even though she herself has no specific knowledge of any adverse impact on environmentally sensitive areas.

73. Ms. Greenblatt also introduced into the record OE39 and OE40, evidence about Ashleigh Knolls Homeownership Association's (AKHO) ownership of Preservation Parcel B, OE41, a copy of the 1996 deed transferring ownership from Winchester Homes to AKHO, and OE42, a copy of the 1994 perpetual

preservation easement between Winchester Homes and the Howard County Conservancy.

74. On cross-examination, Ms. Greenblatt testified to being unaware of how many cell towers the Maryland Department of Natural Resources has approved on their sites/properties, as she did not know they had this approval authority, nor was she aware of any cell towers on federally protected lands. When questioned about her knowledge of any adverse environmental impacts, she thought a tower fall could take out some environment on the Property.

### CONCLUSIONS OF LAW

#### I. Background Issues

##### A. The Conditional Use Petition

Throughout this case, Opposition argued for the petition's denial based on alleged incurable defects in the conditional use petition. The list of alleged fatal infirmities include the petition's lack of written authorization from the property owner in support of AT&T's petition, the petition statement of justification and compliance misidentifying the location of the existing AT&T facility (on a BGE transmission power line) and notes on the CUP that it is "issued for construction." The petition is certainly imperfect—beset by what the Hearing Examiner characterized during the proceeding as stupid mistakes—but none of the technical infirmities is grounds for denying the petition because they do not rise to the level of a jurisdictional fatality. Opposition's invocation of "unclean hands" estoppel and lack of subject matter jurisdiction claims as support for the denial are misplaced. The sole issue is whether the petition comports with due process notice requirements attached to the quasi-judicial administrative hearing process through the clauses of the Fourteenth Amendment and Article 24 of the Maryland Declaration of Rights, which protect an individual's interests in procedural due process. See *Roberts v. Total Health Care, Inc.*, 349 Md. 499, 709 A.2d 142 (1998) (discussing procedural due process).

Within administrative proceedings, due process requires the opportunity to be heard "at a

meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545 (1965). The opportunity to be heard in a meaningful manner includes the right to "notice, including an adequate formulation of the subjects and issues involved in the case." *Boehm v. Anne Arundel County*, 54 Md. App. 497, 459 A.2d, 590 (1983) (quoting B. Schwartz, *Administrative Law*, § 67 at 192-93). An important component "of the procedural due process right is the guarantee of an opportunity to be heard and its instrumental corollary, a promise of prior notice.[]" *Reese v. Dept. of Health*, 177 Md. App. 102, 934 A.2d 1009 (2007) (quoting L. Tribe, *American Constitutional Law* § 10-15, at 732 (2d ed. 1988)). Thus, technical irregularities in a petition will not result in the dismissal of an administrative petition. "Mere irregularities in an application to a board for a permit not amounting to a jurisdictional defect do not affect the validity of the permit. A substantial compliance with the requirements of an administrative regulation in making an application for a permit is sufficient." *Beall v. Montgomery County Council*, 240 Md. 77, 89 212 A.2d 751, 756 (Md. 1965) (quoting *Heath v. Mayor and City Council of Baltimore*, 187 Md. 296, 299, 49 A.2d 799 (1946)).

The administrative petition submission requirement of import in this case is Section 3.1 of the Hearing Examiner Rules of Procedure, which provides for petitions to be filed in the manner prescribed by Section 2.202(a) of the Board of Appeals Rules. Section 2.202(a) itself provides for the Board of Appeals to prescribe the form and content of the petition, for the petitioner to ensure the accuracy and completeness of the information required on the petition and for DPZ to require corrections to the petition or additional information. In this appeal, the pertinent petition is the Conditional Use standard form. Section 4 on Page 2 instructs petitioners to identify their interest in the property, and if not the owner, to submit written authorization from the owner.<sup>5</sup> Section 5—a non-legislative mandate— requires the CUP to include certain identifying information, including under subsection (r), any other information

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<sup>5</sup> The conditional use petition form application mistakenly has two "No. 4" information sections.

as may be necessary for full and proper consideration of the petition.

In this case, the petition included a March 7, 2014 memorandum of lease between Temple Isaiah and AT&T, which included a copy of the site plan submitted with the petition. Petitioner also introduced this memorandum as PE10. This document links petitioner to the property owner and by logical extension conveys permission from the property owner for the telecommunications company to petition for the conditional use. By the plain language of the above petition form requirements, and in light of the above discussion of procedural due process, this information is substantial compliance with the notice of authorization petition requirement. Petitioner introduced PE11, a one-page letter of authorization signed by Larry Gordon, the President of Temple Isaiah, the property owner, during the proceeding. As to the petition statement of justification and compliance misidentifying the existing AT&T facility as located on a BGE power pole and notes on the Conditional Use Plan (CUP) state that the plans are "issued for construction," AT&T corrected these technical irregularities during the lengthy hearing process through witness testimony and exhibits.

Implicit in the Opposition's argument about these technical notice deficiencies is the collateral claim that Petitioner could not cure infirmities in the petition and CUP during the hearing process. On this point, the Hearing Examiner took notice during the proceeding of the County Council's consideration of amendments to the Zoning Regulations' § 130.0 conditional use application submission requirements during the 2012 comprehensive rezoning process and its ultimate rejection of proposed regulatory language that would have proscribed petitioners from amending a conditional use petition or plan at a Hearing Authority (the Hearing Examiner or the Board of Appeals) hearing.<sup>6</sup> The Council instead adopted the language appearing in § 131.0.F.2, which added new subparagraph ".f" to provide as follows.

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<sup>6</sup> See Board of Appeals Case No. 13-024C, decided March 5, 2014, for a full discussion of the recent legislative history on amending conditional use petitions.

After a petition for a Conditional Use has been determined to be officially accepted by the Department of Planning and Zoning and a hearing date has been scheduled, the petition materials shall not be revised or replaced prior to the hearing. The technical staff report shall be based upon the materials in the petition at the time of acceptance. Supplemental materials may only be presented in testimony to the Hearing Authority. (Emphasis added.)

The intent of Subparagraph f. was to curtail petitioners' practice of modifying or revising a petition or plan after DPZ issued its TSR but before the hearing. This solved two problems. DPZ staff is no longer rushed to evaluate a revised plan and update the TSR, which must be issued seven days before a hearing, and some level of certainty is provided to persons and associations interested in the petition hearing, in that they no longer have to review the petition file just before the hearing to see if the petition or plan has been modified. Additionally, as the Hearing Examiner also explained during the proceeding, Hearing Examiner Rule 9.4 expressly provides for amendments to petitions through submission of the amendment as an exhibit. (The Hearing Examiner denied Petitioner's request to submit PE30, a site plan showing an expanded tower compound, as a formal amendment to the plan, owing to its submission late into the hearing.)

The Hearing Examiner here recognizes the importance of the opportunity for citizens to have their voices heard on zoning matters and that notice about the subject of a petition and the issues involved in the petition are intended to safeguard this opportunity. With rare exception, however, irregularities of notice are not jurisdictional cause to deny a petition, as evidenced by the multitude of decision and orders issued by this Hearing Examiner wherein such irregularities were litigated unsuccessfully.<sup>7</sup> In these cases,

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<sup>7</sup> In only one case has the Hearing Examiner sua sponte denied an administrative petition as legally defective on its face and unripe for adjudication. In that case, Board of Appeals Case No. BA 13-029V (decided March 25, 2014), this Hearing Examiner denied the variance petition because the petition and variance plan failed to propose any specific use of the property, such omission precluding any evaluation of the requested variances under the four criteria set forth in Zoning Regulations and contrary to the law of variances.

as here, said litigation was a collateral attack upon the petition, not probative evidence going to the merits.

#### B. RF Coverage and Need

Much of the evidence of record in this case relates to AT&T's search for a replacement commercial communications tower site to provide adequate in-building coverage objectives in the service area. Petitioner witnesses presented evidence that the proposed Tower Facility at the proposed location and height (160' + a 6' antenna) is needed as a replacement for the existing AT&T antennae location on the PEPCO transmission tower (PE6) and to provide adequate indoor coverage to the area along Route 216/Scaggsville Road, Hall Shop Road, Moorland Drive, the intersection of Browns Bridge Road and Lime Kiln Road, the intersection of Pindell School Road and Johns Hopkins Road and the Fulton community (PE2 PE3, PE4, and PE5). The Opposition strongly contested both the need to replace the existing PEPCO site and Petitioner RF coverage objectives evidence through the Amato team RF study, which shows adequate coverage (OE33A-O).

As a first matter, the Hearing Examiner notes that the commercial communications tower conditional use category (§ 131.0.N.17) contains no criterion requiring the Hearing Authority to make a finding as to the need for a proposed tower, no legislatively enacted standard by which to evaluate need. Any reliance on evidence of need in the decision would be arbitrary and capricious for imposing an extra-legislative evidentiary burden on Petitioner. Rather, all the probative evidence about RF coverage in a commercial communications tower conditional use petition and proceeding goes to the affect that the height of the proposed tower at the proposed location would or would not generate atypical adverse impacts and comport with specific conditional use category standards, as further addressed in this background issue section and in Parts II and III of these Conclusions of Law.



B. Visual Impact and the Balloons Tests

There arose in this proceeding a third evidentiary battleground: the visibility of the proposed monopole and attendant adverse impacts. The "Western Front" of this "visibility" campaign occurred not in Belgium (Flanders) and France, but in the sky above Temple Isaiah and Ashleigh Knolls. The campaign began as a war of tactics and technology. Petitioner witnesses presented the AT&T/Dewberry balloon test methodology and attendant visibility photographs (PE15A-I and PE22A-I). The Opposition sought to outmaneuver Petitioner, marshaling their considerable community intelligence in mobile warfare, an alternative balloon test and attendant visibility photographs (OE9, OE10, OE11 and OE12). Petitioner witnesses presented evidence on the monopole's likely visibility from Fulton Ridge Drive, from the lower portion of Crabbury Court, from Scaggsville Road and from other public locations. Opponents contested Petitioner's visibility evidence through multiple photographs showing the monopole, with all co-locator antennae, would be visible from multiple points within the Ashleigh Knolls community, particularly on private property, and at Moorland Drive & Fawn Crossing Drive (OE15-OE21, OE24A-C and OE25). The parties photoshopped monopole images where their balloons were visible in the test photographs.

The Hearing Examiner finds nothing in the evidentiary record to question either balloon test methodology. Both appear to have been conducted in good faith. The Hearing Examiner concludes the monopole's upper section would be visible from some public locations (roads and rights-of-way) in Fulton Ridge Estates and Ashleigh Knolls, including Fulton Ridge Drive (PE15H, PE22I), the Crabbury Court cul-de-sac (PE15F, PE22F, PE22I) and from other public locations in the neighborhood: Scaggsville Road near Temple Isaiah (PE15C, PE22B) and looking east and west along Scaggsville Road (PE22C, PE22H). The Hearing Examiner also concludes the upper portion of the monopole would be visible from private residential property in Ashleigh Knolls and Fulton Ridge Estates and other Ashleigh Knolls locations (OE15-19, 21). It will not likely be visible in other neighborhood (public) locations, including looking east at

Browns Bridge Rd. (PE22D), from Ivy Creek Stables on Browns Bridge Rd. (PE22E) and from Browns Bridge Rd./Moreland Dr. (PE22G).

These findings notwithstanding, the fact that the monopole would be visible lacks independent legal relevance; all cell towers have a visual impact on the area in which they are located. Importantly, none of the visibility evidence in this case tends to show that this proposed tower at this proposed location would have any visual impacts beyond those inherent in cell towers in general. The contrary appears to be true. Owing to the mandatory property line setbacks for towers, intervening preservation parcels and/or easement areas and dense tree stands, only the monopole's upper section (including all co-located antennae) would be visible above the tree lines in the area from multiple vantage points and the monopole's upper section will appear to be more distant the further away the viewer is from it. Moreover, there is no credible evidence that the fenced compound area and bottom section of the tower will be visible. Consequently, there will be less visual impact here than in other residential neighborhoods in evidence. Certainly, the record of evidence shows more visual intrusion from the Clearview Estates tower (PE17B photographs). Former Highland property owner Debbie Pritchard could view much more of the lattice cell tower near her property and the Sullivan property (OE2, 12064 Scaggsville Road) has a direct view of the existing AT&T facility and ground equipment on the PEPCO location.

Still, it is within the Hearing Examiner's discretion to impose reasonable conditions of approval. Because Opponents' balloon test has given us a fuller sense of the likely visibility of the proposed monopole, the Hearing Examiner is adopting Fulton Ridge Estates resident Dustin Hill's alternative recommendation that the monopole be camouflaged as a "monopine treepole" in the manner depicted in OE37. Additionally, all antennae shall be flush mounted at the most technologically feasible minimum distance from the exterior of the monopole. All co-locators shall use a low profile design to minimize the visual impact of the co-locator's antennas.

C. Technological Alternatives to a Commercial Communication Tower

Opposition to the monopole also manifested itself in the production of evidence about technological alternatives to the single monopole conditional use, including alternative means of achieving coverage and/or alternate technology, such as microcells, DAS—distributive antennae systems, multiple antennae on PEPCO towers and retaining the current location in combination with either a structure on top of Temple Isaiah or a new tower on the Maple Lawn water tower (OE33). Opposition's technological alternatives proposals, however, are also wanting in independent legal relevance, there being no conditional use category standard requiring an evaluation of such alternatives. To require such proof would impose an extra-legislative burden on Petitioner. To the extent this evidence goes to the visual impact of the monopole, the Hearing Examiner again notes there is no independent regulatory criterion that a commercial communications tower be designed to minimize its visual impact.

D. Property Values

The proposed monopole's impact on neighborhood property values is another arena of contention in this case. Both sides produced evidence on the question of whether cell towers adversely affect residential property values. As with the visual impact evidence, this evidence is not directly on point, the issue being not whether cell towers generate adverse impacts, which they do, but rather whether a particular tower at a particular location generates atypical, non-inherent adverse effect. There is no evidence in this case that the proposed tower at the proposed site would have adverse effects on nearby residential property values not inherent in cell towers in general. Nevertheless, the Hearing Examiner will here address the main arguments.

Petitioner witness Oakleigh Thorne, a certified general real estate appraiser in the State of Maryland, testified that the proposed monopole would not devalue area property values and not have a negative impact on marketing period or selling price. This testimony is based not on individual residential

property appraisals but on two Howard County "impact studies" where he gauged parity between sales prices of houses in or outside the viewshed/area based on sales price per square foot. By his own admission and through cross-examination, Mr. Thorne conceded the impact studies were not statistically valid due to the small data sample and his method of choosing pairs of houses to compare. For these reasons, the Hearing Examiner accords no evidentiary weight to the Thorne impact studies, which are driven by an arbitrary independent variable (square footage sales price) and Mr. Thorne's unilateral opinion that the visibility of a cell tower has no negative influence on sale price or selling time.

Opposition witness Tom Pirritano, a certified general real estate appraiser specializing in Howard County residential appraisals, took exception with the Thorne impact studies for using square-foot sales price as the measure of impact. He offered his professional opinion that cell towers generate a negative sales price influence (negative externality) in residential appraisals, as do overhead power lines, pipelines or expressways because property owners cannot cure their affect and further, that the presence of a cell tower increases sales time. Based on his professional experience, a view of a cell tower results in an 8-10 percent decrease in value. Concerning the proposed tower, he opined that properties within the visual sight line of the cell tower would be negatively impacted in terms of sales price. If the height was lowered, there would be no negative impact on Crabbury Court (there being no view), but it would still be visible elsewhere.

Mr. Pirritano's opinion that the visibility of a cell tower will always cause an 8-10 percent selling price discount only reinforces the adverse impact rule that general or common adverse effect caused by a cell tower are inherent impacts. Both professional opinions are too broad-brushed to have even limited traction under the substantial body of adverse impact analysis case law arising under *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981) and its progeny requiring specific factual findings about the nature of the purported atypical impact relative to the actual proposed conditional use and the neighborhood where

the use is to be located as compared to cell towers in other neighborhoods (see Part III below). The anecdotal opinions about the effect of nearby cell towers on residential sales values in Opposition email exhibits OE27A (Jacob Goitom, Clearview Estates) and OCE28 and OE29 (Debbie Pritchard, Highland) lack credibility. These opinions are also arguably discounted by PE35, SDAT information about the Goitom property selling at a lesser discount (\$830,000) than claimed by Mr. Goitom (the email states he paid about \$50,000 less than the \$849,900 sales price) and Jeremy Talman's rebuttal testimony about other possible reasons for the Highland Pritchard property sales price (laminated kitchen tops and a purple Ravens basement). As to real estate professional Dustin Hill's opinion that atypical impacts on property values will flow in a neighborhood developed before the construction of a cell tower, the Hearing Examiner finds this test to be contrary to the Shultz test, which is a locational or geographic analysis, not a temporal test.

## **II. General Criteria for Conditional Uses (Section 131.0.B)**

### **1. The proposed Conditional Use plan will be in harmony with the land uses and policies in the Howard County General Plan which can be related to the proposed use.**

PlanHOWARD2030 designates the Property as "Low Density Development" on the Designated Place Types Map. The TSR concludes there are no specific policies in the Plan directly related to the proposed use. Policy 4.5 is a general policy to "[r]efine the Rural Conservation (RC) and Rural Residential (RR) zoning regulations to provide greater flexibility for the agricultural community as well as appropriate protections for rural residents." During the 2013 Comprehensive Zoning Plan process, the Communications Towers were still found to be appropriate in the RC and RR districts and the use standards were amended in pertinent part to expand the §131.0.N.14.b.(1) service area map from 0.5 miles to 1.0 miles.

**2. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are such that the overall intensity and scale of the use(s) are appropriate for the site.**

The proposed use is a small, passive, low intensity utility use accessed from a wide driveway off MD 216 with no sight distance issues and an internal driveway. The use will generate only a limited number of vehicle trips. The site would occupy only a very small portion of the Property and meet all setbacks.

**3. The proposed use at the proposed location will not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses.**

Unlike § 131.0.B.1, which tests the proposed use's harmony or compatibility with the General Plan, and § 131.0.B.2, which tests certain on-site aspects of the proposed use relative to the subject property, § 131.0.B.3 measures the use's off-site compatibility with the neighborhood under six "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading; (d) access; (e) impact on vicinal environmentally sensitive areas and; (f) impact on vicinal historic sites. Inherent in the assessment of a proposed conditional use under these criteria is the recognition that virtually every human activity has the potential for adverse impact. The assessment therefore accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before the Hearing Examiner is not whether the proposed use would have adverse effects in an RR zoning district. The proper question is whether there are facts and circumstances showing the particular use proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception [conditional] use irrespective of its location within the zones. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008) ("*Loyola*"); *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995). The *Schultz* adverse impact test, a non-inherent, off-site impact analysis, narrowly focuses on the locality of the specific proposal.

**a. The impact of adverse effects such as, but not limited to, noise, dust, fumes, odors, intensity of lighting, vibrations, hazards or other physical conditions will be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning districts.**

In this case, there is no evidence of adverse dust, fumes, odors, intensity of lighting or vibrations on vicinal properties beyond those ordinarily associated with a telecommunications tower and equipment compound in the RR district. With respect to general noise from the Tower Facility, adjoining property owner Viram Patel testified about his tenant equestrian riding stable and boarding facility's concerns through OE36, a letter from Ivy Creek Stables operator Royce Evans alleging lost revenue and vet bills from spooked and distracted horses caused by noise as adverse effects. In the Hearing Examiner's view, the speculative nature of noise concerns as it affects the stable use does not sufficiently demonstrate any adverse effects unique or different from those ordinarily associated with a commercial communications tower. Additionally, other than potential temporary construction noise, the evidence of record about noise indicates its absence. The proposed generator will be enclosed to block noise (PE31) and all generators must meet county noise ordinance requirements.

Concerning any hazards relating to the generator, Mr. Berté explained through E31, spec sheets for a GENERAC industrial diesel generator similar to the one that AT&T uses, that diesel fuel is encapsulated by a double wall tank with an alarm on both the inner and outer tanks, with space between the tanks. The TSR concludes the generator would occasionally generate some noise, but it is a 50KW diesel model, which typically have low noise ratings. The generator would also be enclosed within the fenced compound and would be well separated from all residential uses outside the Property.

**b. The location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.**

The monopole and Tower Facility would be sited in compliance with all setback requirements. The

CUP shows the proposed Tower Facility would be well screened and buffered. The monopole would be located 170 feet from the western and common lot line with Parcel 108 and 168 feet from Preservation Parcel B. Wooded areas to the west, north and east will screen all but the upper portion of the monopole, which at an approximately 850' distance from the nearest Fulton Ridge Estates residential property, about 900' from the nearest (non-adjacent) Crabbury Court property and more than 900' from Scaggsville Road, would not tower over residential lots. The adjoining Patel property (Parcel 108) includes Mr. Patel's 5,000'+/- residence, is not a "residential lot or parcel" under Zoning Regulations § 103.0., "[a] lot or parcel improved with a single-family residence as the principal use" but rather an agricultural use. Cell towers are commonly located on or near agricultural uses and there is no credible evidence of atypical impact on the principal or residential structure, which sits about 670' from the monopole.

The ground equipment will be buffered by landscaping and an 8-foot stockade fence. Although an upper portion of the monopole will be visible from some dwellings, the distance is such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.

**c. The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.**

Site visits to the Tower Facility will be infrequent, so the pull up area depicted next to the compound will adequately serve the use. The landscaped parking area and extended driveway serving the Tower Facility are appropriately located will also function as a turnaround area and will be landscaped. The parking area will be rarely used, as the compound is unmanned, and the proposed area will easily accommodate the occasional employee visit.

**d. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate. For proposed Conditional Use sites which have driveway access that is shared with other residential properties, the**



**proposed Conditional Use will not adversely impact the convenience or safety of shared use of the driveway.**

There is no contraindication that the existing ingress/egress of MD 216 will not provide safe access with adequate sight distance. There is no shared driveway access.

**e. The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.**

The petition statement of justification states "[t]he Facility will not impact any environmentally sensitive area and most certainly will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere." The TSR notes the presence of an off-site environmentally sensitive area to the northeast of the Site, beyond wide wooded buffers, and concludes the proposed use will not have a greater potential for adversely affecting environmentally sensitive areas in the vicinity than elsewhere. The TSR additionally reports that the Departments of Recreation and Parks (DPR), Fire and Rescue Services and Inspections, Licenses and Permits have no objections to the proposal. DPR is the enforcer of county forest conservation easements and DPR staff provided Ms. Greenblatt with the maps and information about the areas of her concern.

Opponent Melissa Greenblatt claimed through OE46-50 that Petitioner had not demonstrated the lack of adverse impact on "lots of interesting environmental areas" near the property, including adjoining preservation parcels, forest conservation easement areas, Hammond Branch stream and nearby floodplains. It appears from these exhibits and Ms. Greenblatt's testimony that she believes denial is warranted for two alternative reasons; Petitioner inadequately demonstrated the absence of any adverse effect on these areas and the collective presence and size of these areas suggest an adverse impact not addressed by Petitioner.

Certainly, the petition justification's conclusory adverse environmental impact statement, without more, is too vague and generalized to be accorded probative value. Moreover, the CUP shows

only a general forest conservation area on Preservation Parcel B and not the Hammond Branch stream and nearby floodplains. Still, we need to take into account the TSR, which is part of the record of the case and introduced as PE17. DPZ, through the TSR, took note of these sensitive areas, and without making any conclusions that the Tower Facility would generate specific atypical impacts, reasoned forest buffering and distance would prevent any adverse impact. The Hearing Examiner assigns significant weight to the DRP report to DPZ that it had no objection to the petition, which in part supported DPZ's recommendation of approval. When DRP reported to DPZ that it had no objections to the petition, the department was making a determination that there were no impacts of concern to its charge.

By her own admission, Ms. Greenblatt did not introduce OE46-50 to refute Petitioner's statement of no adverse effect on "interesting environmental areas," assuming *arguendo* these areas are "environmentally sensitive" for the purpose of the adverse effect test. Her exhibits neither contradict nor rebut the TSR's evaluation. Without more, any concern about the sheer collective presence and size of these areas rising to the level of an atypical adverse effect is entitled to no weight.

**f. The proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.**

The TSR notes the location of the nearest historic site on Hall Shop Drive over 3,000 feet to the northeast and concludes the proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

**II. Specific Criteria for Communications Towers or Antennas (Commercial) (§ 131.O.N.14.b)**

**b.(1) An applicant for a new communication tower shall demonstrate that a diligent effort has been made to locate the proposed communication facilities on a government structure or, on an existing structure or within a non-residential zoning district, and that due to valid considerations, including physical constraints, and economic or technological feasibility, no appropriate location is available. The information submitted by the applicant shall include a map of the area to be served by the tower, its relationship to other antenna sites in the area and, an evaluation of all existing structures taller than 50', within one mile of the proposed tower.**

We come now to the gravamen of this case, AT&T's diligent effort search for an alternative site. As an initial matter, the Hearing Examiner dispenses with Opponents' position that the zoning team was not diligent in searching for a non-residentially zoned site because Jeremy Talman relied on Charles Lager's disinterest in leasing Lager controlled properties without absolute proof that Mr. Lager had binding decision-making authority about locating a tower on these properties. Nothing in the record gives the Hearing Examiner pause to discount Mr. Talman's reliance on Charles Lager for such decision-making authority. More to the point, to exact the type of detailed information submissions and evidence Opposition insists upon is contrary to what is legislatively required to demonstrate compliance with this due diligence search standard.

Government structure sites. Turning now to Petitioner's diligent effort to locate the proposed communication facilities on a government structure, the Hearing Examiner finds the only government structures in the general area are the four county schools denoted in Table 1. Mr. Talman testified that no school structure was more than one or two stories in height. Given this height limitation, the structures were not technologically feasible because they could not replace the tower height. The playfield lights on school property are too short and not structurally capable of supporting the load. With respect to Opponents' argument that Petitioner did not make a diligent effort to locate a tower on school land, failing to even make a phone call to the school board, the Hearing Examiner emphasizes here that the diligent search does not extend to school property, which in this case is zoned residential (Rural Residential). The standard requires only that the search extend to government structures and that due to valid considerations, including physical constraints, and economic or technological feasibility no suitable government structure was found. Petitioner meets its burden of proof as to the search for a suitable government structure site.

Existing structure sites (Tables II & IV, OE3, OE4, OE5, OE6 and OE7). The Hearing Examiner finds

Petitioner studied the potential of co-locating the commercial communications tower at 65' on the existing Pindell School Road PEPCO power pole site, which the RF team found to be technologically unfeasible. Petitioner also explored locating the replacement tower on the Maple Lawn Water Tower, which the RF team rejected, the site being outside the search area. Moreover, Howard County bans antennae atop or above such tanks. AT&T also looked at the SBA tower site, which the RF team rejected for being too far from the search ring center. Opponents offered the silo on the Rojas farm (12044 Scaggsville Road, zoned RR) as an alternate location. Petitioner witness Jeremy Talman testified through PE32A-D that the silo shown in PE32D lacks the necessary height and could not support the antennae. The Hearing Examiner concludes AT&T permissibly rejected these existing structures sites for valid reasons.

Non-residential zoning district sites (Table II, PE12 and OE3). Petitioner evaluated the potential of locating the replacement tower at the B1/B-2 zoned Fulton Station/Post Office/Ledo Pizza, Shell Gas location (11835 Scaggsville Road), which Charles Lager rejected. Petitioner also looked at the B-1 zoned Mauck Property (11920 Lime Kiln Road), but the property owners were not interested in a lease. The lack of a willing landlord is a valid reason for not considering these sites.

Residential zoning district sites (PE12). The purpose of the diligent search requirement of § 131.0.N.14.b.(1) is to direct commercial communication towers away from residential zoning districts to the extent possible. In rural areas where there are few government structures and only small clusters of non-residential zoning properties, which are commonly smaller parcels, finding a suitable site on a government structure or non-residentially zoned land is a challenge. Even existing rural structures like silos, water towers and transmission lines may not be suitable candidates, as evidenced in this case. For this reason, the search for a suitable tower location moves to raw sites on residentially zoned land. In this case, Petitioner examined two residentially zoned properties improved with non-residential uses, including two sites within the one-mile search ring, Good Hope Presbyterian (zoned RR) and Maple Lawn

Farms (zoned RR). Both property owners declined AT&T's interest in locating on the property. The RF team rejected a third site, Saint Paul's Lutheran Church (11795 Scaggsville Road, zoned RR), located 1.4 miles from the search ring center, because it did not meet coverage objectives.

Opponents sought to expand the location diligent search mandate to include an examination of multiple area properties, all of which are zoned RR. These alternative locations are shown in Table IV and were introduced as exhibits PE23A, OE2, OE3 and OE8. Because the diligent search standard does not require petitioners to include such sites as part of its due diligence location search, the Hearing Examiner makes no findings as to their suitability. To do so would be contrary to the *Schultz* adverse impacts test clarified in *Loyola*, where the high court firmly rejected appellants' interpretation of the *Schultz* test as compelling an applicant for a special exception (conditional use) to compare, and concomitantly the zoning body to consider, the adverse effect of the proposed use at the proposed location to, at least, a reasonable selection or representative sampling of other sites within the same zone throughout the district or jurisdiction, taking into account the particular characteristics of the areas surrounding those other test sites. Opponents' interest in having Petitioner look at these sites is due to the simple fact that they do not want the cell tower in their neighborhood.

Section 131.0.N.14.b.(1) also requires an applicant to submit certain information about its location search with the petition, including a map of the area to be served by the tower, its relationship to other antenna sites in the area and, an evaluation of all existing structures taller than 50', within one mile of the proposed tower. The petition included this information as was needed to comply. The petition complies with § 131.0.N.14.b.(1).

**(2) New communication towers shall be designed to accommodate antennas for more than one user, unless the applicant demonstrates why such design is not feasible for economic, technical or physical reasons. Unless collocation has been demonstrated to be infeasible, the Conditional Use plan shall delineate an area near the base of the tower to be used for the placement of additional equipment buildings and cabinets for other users.**

The evidence of record, including the CUP and testimony by Phil Stetler, Ivan Caballero and Nick Berté, indicates that the proposed monopole is designed to accommodate up to three uses. PE30, a site plan shows an expanded area for additional equipment. The Hearing Examiner notes here that she declined to accept this exhibit as a formal amendment to the plan given its late introduction, but nonetheless recognized its intent to comport with this standard. The petition complies with § 131.0.N.14.b.(2).

**(3) Ground level equipment and buildings and the tower base shall be screened from public streets and residentially-zoned properties.**

The compound will be screened with a stockade fence, new and existing landscaping, in compliance with § 131.0.N.14.b.(3).

**(4) Communication towers shall be grey or a similar color that minimizes visibility, unless a different color is required by the Federal Communications Commission or the Federal Aviation Administration.**

The CUP and petition supplement indicate the monopole shall be grey/steel, in compliance with § 131.0.N.14.b.(4). Because the Hearing Examiner is requiring the monopole to be camouflaged, an alternative color may be advisable.

**(5) No signals or lights shall be permitted on a tower unless required by the Federal Communications Commission or the Federal Aviation Administration.**

The CUP and petition supplement indicate the monopole will not include any signals or lights, in compliance with § 131.0.N.14.b.(5).

**(6) A communication tower that is no longer used shall be removed from the site within one year of the date that the use ceases.**

The CUP and petition supplement state the tower shall be removed from the site within one year of the date that the use ceases, in compliance with § 131.0.N.14.b.(6).

**(7) The communication tower shall comply with the setbacks for such structures as specified in Section 128.0.E.**

Section 128.0.E.2.a.(1), Supplementary Regulations for Communication Towers, provides in pertinent part that the setback for towers in residential districts shall be a minimum distance equal to the tower height (including antennas) measured from ground level. The CUP and petition justification show the tower setback as 168' from Preservation Parcel B, several hundred feet from the Fulton Ridge Estates properties, more than 900' from Scaggsville Road, 170' from the adjoining Patel property and about 371 feet from the triangular portion of the Ashleigh Knolls preservation parcel. The petition complies with § 131.0.N.14.b.(7).

**(8) On an ALPP purchased easement property, the use is not permitted except as a release of one acre for a public interest use per Section 15.516 of the Howard County Code.**

This section is inapplicable. The Property is not an ALPP purchased easement property.

**(9) On an ALPP dedicated easement property, the use is permitted, provided that the use shall not interfere with farming operations or limit future farming production, shall operate within a specified area, which shall be no larger than necessary for the tower and the ground mounted equipment structures, and the parking shall be within this same area. The tower, the ground mounted equipment and parking shall count towards the cumulative use cap of 2% of the easement.**

This section is inapplicable. The Property is not an ALPP purchased easement property.

**ORDER**


Based upon the foregoing, it is this **11<sup>th</sup> day of December 2014**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of AT&T Mobility for a Commercial Communications Tower Conditional Use in an RR-DEO (Rural Residential: Density Exchange Option) District is **GRANTED;**

**Provided however, that:**

1. The Conditional Use shall be conducted in conformance with and shall apply only to the proposed facility described in the petition and not to any activities, uses or structures on the Property.
2. The monopole shall be camouflaged as a "monopine treepole" in the manner depicted in OE37. The antennae shall be flush mounted at the most technologically feasible minimum distance from the exterior of the monopole. All co-locators shall use a low profile antennae design. Petitioner may change the color of the monopole in keeping with the monopine camouflage design unless a different color is required by the Federal Communications Commission or the Federal Aviation Administration.
3. Petitioner shall show all forest conservation easement areas on the site development plan. No portion of the commercial communications tower facility, including any future expanded compound to accommodate additional carriers, shall be located within any forest conservation area. This condition may not be waived as may be permitted under SLDR § 16.104. - Waivers.
4. The Hearing Examiner formally revokes DPZ's administrative authority under Zoning Regulations § 131.0.7.2.c to approve minor modifications to the configuration of buildings or other improvements on conditional use plans as long as they do not move closer to abutting residential properties or other uses that might be adversely impacted, excepting for any future expansion of the compound to accommodate co-locators. This Decision and Order granting the requested conditional use is wholly dependent on the proposed Tower Facility being located where depicted on the conditional use plan.
5. No additional lighting is permitted other than that required by the Federal Communications Commission or the Federal Aviation Administration.
6. If no longer used, the communication tower shall be removed from the site within one year of the date the use ceases.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
Michele L. LeFaivre



Date Mailed: \_\_\_\_\_

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 calendar days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.